THE

REVISED STATUTES

OF THE

STATE OF INDIANA,

PASSED AT THE

TWENTY-SEVENTH SESSION OF THE GENERAL ASSEMBLY; ALSO SUNDRY ACTS, ORDINANCES, AND PUBLIC DOCUMENTS DIRECTED TO BE PRINTED WITH THE SAID STATUTES:

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Indiana.

PRINTED AND PUBLISHED ACCORDING TO LAW.

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1843.

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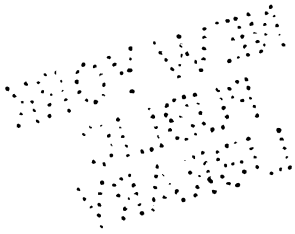

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PREFACE.

By an act of the general assembly, approved February 4, 1841, Samuel Bigger was "authorized to prepare a compilation and revision of the general statute laws of this state, and to suggest such amendments and alterations in any of said statutes, and to prepare such additions as he might deem proper, with a view to the adoption and enactment by the legislature of a full and complete code of general laws." By the same act, the revision wast to be completed, at the farthest, by the first Monday in December, 1842.*

The reviser, thus appointed, immediately entered on the labor assigned to him; but becoming well satisfied that unaided, he could not prepare the revision by the time contemplated, he solicited the legislature, at the following session, to unite some person with him in the work. This was done by an act approved January 18, 1842, by which George H. Dunn was associated with the reviser first appointed.†

It has been the aim of the revisers to preserve the leading principles embodied in the statutes in force at the time the revision was undertaken, and to propose such amendments, alterations, and additions as appeared proper and necessary. There were numerous defects in the existing statutes. Enactments relating to the same subject were found in different acts, sometimes agreeing with each other, and not unfrequently contradictory. Single sections, so long and intricate as to be almost unintelligible, very often contained provisions wholly dissimilar. The course adopted for the purpose of securing a systematic arrangement of the various matters embraced in the statutes has been to bring together in the same chapter, under appropriate divisions, all the subjects contemplated by the title of such chapter, and nothing more; to arrange each topic in its regular connection, and to comprise but a single substantive provision in each section. The whole has been a work of much labor. Almost every section has been written anew. Many additional provisions have been introduced, some of them entirely changing the previous law. As to the most important of these, it is proper to state, that they were not recommended to the consideration of the legislature without high authority in favor of their adoption.

The revision was reported and passed at the session of the legislature which commenced on the first Monday of December, 1842. A joint committee, to which the revision was referred, was appointed, consisting of Messrs. Wright, Kelso, Bright, Pitcher, and Collins, of the senate; and of Messrs. Gorman, Hawkins, Williams, Robinson, Proctor, Wilson, Nees, Thompson, Matheney, and Tingley, of the house. This committee spent the entire session in the examination and discussion of the various parts of the revision; and the revisers cannot suffer this opportunity to pass without expressing their grateful sense of the manner in which the result of their labors was received and acted upon, not only by the committee, but also by the legislature. The general plan proposed by the revisers was adopted. Some important

* General laws 1841, page 150.

† Senate Journal 1842, p. 116. General Laws 1842, p. 148.

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amendments and alterations were made, and in some instances matters submitted in the revision were rejected; but the whole was passed with fewer alterations than had been anticipated by the revisers.*

The revisers are well aware that defects and discrepancies will be found to exist. Any thing else was not to be expected, when the entire change which has been made in the plan and arrangement of the statutes, the confused materials out of which the whole was to be collected, the omissions to be supplied, and the defects to be remedied, are all taken into consideration. Some of the amendments made by the legislature have somewhat disturbed the consistency of arrangement aimed at by the revisers, because other provisions were affected, and were not conformed to the amendments which were adopted. But such instances, it is believed, are not numerous.

By an act, approved February 13, 1843, the revisers, in conjunction with the secretary of state, were directed to superintend the printing of the statutes. The revisers, by the same act, were required to prepare marginal notes to the sections, and an analysis to be placed at the head of each chapter and article, and an exact and copious index to the whole volume. They were also directed to insert references to the decisions of the supreme court of this state, and to such other authorities as could be conveniently made, in connection with the appropriate sections.

THE REVISED STATUTES are divided into four parts, each part forming a distinct act.

The first embraces the boundaries, jurisdiction, divisions, civil government, and internal administration of the state.

The second embraces the statutory provisions relating to the acquisition, the enjoyment, and the transmission of property, real and personal, the domestic relations, and other matters connected with private rights.

The third has relation to courts of justice and their officers, and actions and proceedings in civil cases.

The fourth embraces crimes and punishments, and proceedings in criminal cases.

The whole is divided into chapters, articles, and sections. The chapters are numbered consecutively from the commencement to the end of the Revised Statutes. The sections are numbered from one progressively to the end of each chapter, without regard to the articles into which the chapter is divided. This plan was adopted for convenience, it being now only necessary, in case of any reference, to state the chapter and section. In addition to the four acts above mentioned, there is another act "concerning the repeal of statutes, and general provisions relating to the Revised Statutes." This act contains some important rules in relation to the construction of the Revised Statutes, the meaning of various terms used therein, and the effect of certain statutes enacted at the same session of the legislature, not embraced in the revision, but printed in this volume.

A few acts which were not revised, but which have been continued in force, are published in accordance with the act above mentioned. As the Revised Statutes have adopted the rules of the civil law, in computing the degrees of kindred, those rules are printed in the appendix.

An analytical table has been prefixed to the volume, containing the titles of the different parts, chapters, and articles, with a reference to the pages at which they severally commence. At the head of each chapter is placed a table of the articles which it contains; and at the commencement of each article is arranged a summary of the contents of the sections it embraces; or if the chapter is not divided into articles, as is the case in a few instances, this summary is placed at the head of the chapter. A note of the subject matter of each section has also been placed in the margin. A full general index is subjoined. It is believed that the facilities furnished by the va-

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*Among the matters rejected was the chapter relating to vagrants, so that there is now no statute on that subject.

Repeated efforts, all of which failed, were made, at the session at which the Revised Statutes were enacted, to pass an act regulating the fees and salaries of officers; hence it became necessary to continue the existing statutes on those subjects in force. See post, p. 1025, sec. 14.

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rious tables and the general index are such, as that no difficulty will be experienced in referring to any subject embraced in the volume.

The references to Blackford's Reports, and to other authorities, involved some difficulty. To have collected all the cases, which might have been cited, even from the decisions of our own supreme court, would have greatly increased the size of the volume, already larger than was originally anticipated. The revisers have therefore confined themselves to such references as it was supposed would be most useful.

The revisers were obligingly furnished by the reporter with the fifth volume of Blackford's Reports, as far as printed; but as the volume was not complete, and as there was no index, some cases proper to have been cited may not be embraced in the notes to the Revised Statutes. Only the first part of the sixth volume of Blackford has as yet been published.

There may be some persons, whose familiarity with the old statutes, and their arrangement, may lead them to object to the plan adopted by the revisers, because this previous familiarity is rendered nearly useless. It will require, however, but little effort, on the part of such, to overcome this difficulty; while those who may hereafter wish to acquire an intimate knowledge of our laws, will, it is confidently believed, find them much easier of access. It may also be objected by some, that the revision contains many unnecessary enactments—unnecssary, because they were already the law. This objection might have some force if all who administer the laws were familiar with the unwritten law of the land. But it must be remembered that many persons who act in official stations are not, nor are they expected to be, conversant with this law; and therefore it was deemed both proper and expedient to insert those provisions, with a view to assist such persons in the discharge of their duties.

The large number of copies ordered to be printed, the size of the volume, and the amount of public printing to be done before the statutes could be commenced, have made it necessary to carry the work through the press with extreme rapidity. Upon this the revisers and the public printers rely as an apology for such errors as may be found in the text and the general execution of the work. The *errata*, contained in the official certificate of the secretary of state, embrace all the material errors which have been detected.

The revisers submit the result of their labors to the people of the state of Indiana, with full confidence that all due allowances will be made for any imperfections which may be found to exist. It will be much easier for the reader to discover defects than it was for the revisers to avoid them; but they trust that when their labors are scrutinized, the embarrassments and difficulties of the task, and the limited time within which it was required to be completed, will not be forgotten. They are satisfied of one thing, that whatever may be the reception of the Revised Statutes, it will hereafter be found that a systematic arrangement and revision of the laws will be a task infinitely more easy, than if this revision had never been attempted.

SAM. BIGGER,
GEO. H. DUNN.

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CERTIFICATE AND ERRATA.

I, WILLIAM SHEETS, secretary of state, do hereby certify that the statutes and the constitution of the state of Indiana, contained in this volume, have been examined and compared with, and are found to be correctly printed from, the enrolled statutes and constitution on file in my office, with the exceptions contained in the following errata:

Page 76. 6th line from the top, strike out the word "*half;*" the last word in the line.

76. 21st line from the top, for "*twenty-three*," read "*twenty, thence.*"

65. The title of the act on said page is a mistake. The correct title is at the head of the next following page.

251. 3d line of section 94, for "*one hundred and thirteen*," read "*seventy-eight;*" and in the fourth line of the same section, for "*fourteen*," read "*fifteen.*"

301. Line next to the last line in section seven, after "*any*," supply "*other.*"

325. 1st line of section 139, for "*article*," read "*chapter.*"

348. 1st line of section 22, for "*article*," read "*chapter.*"

415. Last word of section 10, for "*devised,*" read "*derived.*"

457. 5th line of section 22, after "*sale.*" supply "*or transfer;*" and after "*made,*" supply "*or title confirmed.*"

491. 3d line of section 28, for "*change*," read "*charge.*"

551, 3d line of section 365, for "*creditor*," read "*creditors.*"

552. 5th line of second clause of section 367, for "*them other*," read "*the mother.*"

563. 2d line of section 415, for "*section*" read "*sections.*"

569. 3d line of section 2, strike out the first two words [to be] of said line.

654. 2d line of section 53, strike out the words, "*the production of.*"

792. 3d line of section 4, for "*esate*," read "*estate.*"

847. Title of article 5, for "*review*," read "*discovery.*"

960. 3d line of section 1, after "*perpetration*," supply "*of.*"

1028. 2d line of clause 6, of section 19, for "*January*," read "*February.*"

1028. 2d line of clause 11, of section 19, for "*February* 13, 1841," read "*January* 31, 1842."

WM. SHEETS,
Secretary of state.

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CONSTITUTION

OF

THE UNITED STATES.

ARTICLE I.

SECTION

1. Legislative powers, in whom vested.
2. House of representatives, how and by whom chosen.—Qualifications of a representative.—Representatives and direct taxes, how apportioned.—Census.—Vacancies to be filled.—Power of choosing officers, and of impeachment.
3. Senators, how and by whom chosen.—How classified.—State executive to make temporary appointments, in case, &c.—Qualifications of a senator.—President of the Senate, his right to vote.—President pro tem. and other officers of Senate, how chosen. Power to try impeachments.—When president is tried, chief justice to preside.—Sentence.
4. Times, &c. of holding elections, how prescribed.—One session in each year.
5. Membership.—Quorum.—Adjournments.—Rules.—Power to punish or expel.—Journal.—Time of adjournments limited, unless, &c.
6. Compensation—Privileges—Disqualification in certain cases.
7. House to originate all revenue bills.—Veto.—Bill may be passed by two-thirds of each house, notwithstanding, &c.—Bill not returned in ten days.—Provision as to all orders, &c. except, &c.
8. Powers of congress.
9. Provision as to migration or importation of certain persons.—Habeas corpus.—Bills of attainder, &c.—Taxes, how apportioned.—No export duty.—No commercial preferences.—No money drawn from treasury, unless, &c.—No titular nobility.—Officers not to receive presents, unless, &c.
10. States prohibited from the exercise of certain powers.

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2. President to be commander in chief.—He may require opinion of, &c. and may pardon.—Treaty making power.—Nomination of certain officers.—When president may fill vacancies.
3. President shall communicate to congress.—He may convene and adjourn congress, in case, &c.; shall receive ambassadors; execute laws, and commission officers.
4. All civil offices forfeited for certain crimes.

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11. Same subject.
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Preamble.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION FOR THE UNITED STATES OF AMERICA.

ARTICLE I.

Legislative powers, in whom vested.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

House of representatives, how and by whom chosen.

SECT. 2. The house of representatives shall be composed of members chosen every second year, by the people of the several States; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Qualifications of a representative.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

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Representatives and direct taxes shall be apportioned among the several states, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand; but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Representatives and direct taxes, how apportioned.

Census.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Vacancies to be filled.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Power of choosing officers, and of impeachment.

SECT. 3. The senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Senators, how and by whom chosen.

Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments, until the next meeting of the legislature, which shall then fill such vacancies.

How classified.

State executive to make temporary appointments, in case, &c.

No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

Qualifications of a senator.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

President of the senate, his right to vote.

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President pro tem. and other officers of senate, how chosen

The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States.

Power to try impeachments.

The senate shall have the sole power to try all impeachments: when sitting for that purpose they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

When president is tried, chief justice to preside.

Sentence.

Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Times, &c. of holding elections, how prescribed.

SECT. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

One session in each year.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Membership.

SECT. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of

Quorum.

each shall constitute a quorum to do business; but a smaller

Adjournments.

number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Rules. Power to punish or expel.

Each house may determine the rules of its proceedings, and punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Journal.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Time of adjournment limited, unless, &c.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Compensation.

SECT. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and

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paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to, and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place. Privileges.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office. Disqualification in certain cases.

SECT. 7. All bills for raising revenue, shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills. House to originate all revenue bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons, voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return, in which case it shall not be a law. Veto. Bill may be passed by two-thirds of each house, notwithstanding, &c. Bill not returned in ten days.

Every order, resolution or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment) shall be presented to the president of the United States; and, before the same shall take effect, shall be approved by him, or being disapproved by him shall be repassed by two-thirds of the senate and house of rep- Provision as to all orders, &c. except, &c.

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resentatives, according to the rules and limitations prescribed in the case of a bill.

Powers of congress.

SECT. 8. The congress shall have power:—To lay and collect taxes, duties, imposts and excises; to pay the debts, and provide for the common defence and general welfare, of the United States; but all duties, imposts and excises shall be uniform throughout the United States:—To borrow money on the credit of the United States:—To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:—To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:—To coin money, regulate the value thereof, and of foreign coin, and to fix the standard of weights and measures:—To provide for the punishment of counterfeiting the securities and current coin of the United States:—To establish post offices and post roads:—To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries:—To constitute tribunals inferior to the supreme court:—To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:—To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:—To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years:—To provide and maintain a navy:—To make rules for the government and regulation of the land and naval forces:—To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions:—To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress:—To exercise exclusive legislation in all cases whatsoever, over such district, (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings: and to make all laws which shall be necessary and proper for carrying into

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execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Provision as to migration or importation of certain persons

SECT. 9. The migration or importation of such persons, as any of the states now existing shall think proper to admit, shall not be prohibited by the congress, prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Habeas corpus.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Bills of attainder, &c.

No bill of attainder, or *ex post facto* law, shall be passed.

Taxes, how apportioned.

No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration, herein before directed to be taken.

No export duty

No tax or duty shall be laid on articles exported from any state.

No commercial preferences.

No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.

No money drawn from treasury, unless, &c.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No titular nobility.

Officers, not to receive presents, unless, &c.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

States prohibited from the exercise of certain powers.

SECT. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports, or exports, shall be for the use of the treasury of the United States; and all such laws shall

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be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

President and vice president, their term of office.

SECT. 1. The executive power shall be vested in a PRESIDENT of the United States of America. He shall hold his office during the term of four years; and, together with the vice president, chosen for the same term, be elected as follows:

Electors of president and vice president, number, and how appointed.

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the congress: But no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Amendment XII. a substitute for this paragraph.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves: and they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed: And if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall in like manner choose the president: but in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more who have

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equal votes, the senate shall choose from them, by ballot, the vice president.]

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States. Electors to vote on same day.

No person, except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States. Qualifications of president.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president; and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected. On whom his duties devolve in case of his removal, death, &c.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them. President's compensation.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States." His oath.

Sect. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment. President to be commander in chief. He may require opinion of, &c. and may pardon.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, Treaty making power. Nomination of certain officers.

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other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

When president may fill vacancies.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

President shall communicate to congress.

SECT. 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

He may convene and adjourn congress, in case, &c.

Shall receive ambassadors; execute laws, and commission officers.

All civil offices forfeited for certain crimes.

SECT. 4. The president, vice president, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Judicial power.

SECT. 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Tenure.

Compensation.

Judicial power, to what cases it extends.

SECT. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, [between

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a state and citizens of another state,] between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens or subjects. See amendment XI.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make. Original jurisdiction of supreme court. Appellate.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed. Trial by jury, except, &c. Trial, where.

SECT. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court. Treason defined. Proof of.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted. Punishment of.

ARTICLE IV.

SECT. 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state: and the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof. Each state to give credit to the public acts, &c. of every other.

SECT. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. Privileges of citizens of each state.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime. Fugitives from justice to be delivered up.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or Persons held to service, having escaped, to be delivered up.

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labor; but shall be delivered up, on claim of the party to whom such service or labor may be due.

Admission of new states.

SECT. 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

Power of congress over territory and other property.

The congress shall have power to dispose of, and make all needful rules and regulations, respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed, as to prejudice any claims of the United States, or of any particular state.

Republican form of government guaranteed. Each state to be protected.

SECT. 4. The United States shall guaranty to every state in this Union a republican form of government; and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

Constitution, how amended.

The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendments, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Proviso.

ARTICLE VI.

Certain debts, &c. adopted.

All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

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This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding. Supremacy of constitution, treaties and laws of the U. States.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States. Oath to support constitution, by whom taken. No religious test.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution, between the states so ratifying the same. What ratification shall establish constitution.

ARTICLES,

In addition to, and amendment of, the constitution of the United States, ratified by the legislatures of the several states, pursuant to the fifth article of the original constitution.

I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. Religious establishment prohibited. Freedom of speech; of the press, and right to petition.

II. A well regulated militia being necessary to the security of a free state, the right of the people, to keep and bear arms shall not be infringed. Right to keep and bear arms.

III. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law. No soldier to be quartered in any house, unless, &c.

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Right of search and seizure regulated.

IV. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Provisions concerning prosecutions, trial and punishment.

V. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Private property, not to be taken for public use, without, &c.

Further provisions respecting criminal prosecutions.

VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district, wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

Right of trial by jury secured.

VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined, in any court of the United States, than according to the rules of the common law.

Excessive bail or fines and cruel punishments prohibited.

VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Rule of construction.

IX. The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Same subject.

X. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Same subject.

XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced

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or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

XII. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president; but in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice; and if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March then next following, then the vice president shall act as president, as in case of the death or other constitutional disability of the president. Manner of choosing president and vice president.

The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the senate shall choose the vice president; a quorum for that purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. Same subject.

But no person, constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States. Same subject.

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ACT OF VIRGINIA.

An Act to authorize the delegates of this State in congress, to convey to the United States in congress assembled, all the right of this Commonwealth to the Territory north westward of the river Ohio.

[PASSED DECEMBER 20, 1783.]

Preamble.

1. WHEREAS, The congress of the United States did, by their act of the sixth day of September, in the year one thousand seven hundred and eighty, recommend to the several states in the Union, having claims to waste and unappropriated lands in the western country, a liberal cession to the United States, of a portion of their respective claims for the common benefit of the Union:

2. And, whereas, this Commonwealth did, on the second day of January, in the year one thousand seven hundred and eighty-one, yield to the congress of the United States, for the benefit of the said states, all right, title, and claim, which the said Commonwealth had to the territory northwest of the river Ohio, subject to the conditions annexed to the said act of cession:

3. And, whereas, the United States, in congress assembled, have, by their act of the thirteenth of September last, stipulated the terms on which they agree to accept the cession of this state, should the legislature approve thereof, which terms, although they do not come fully up to the propositions of this Commonwealth, are conceived, on the whole, to approach so nearly to them, as to induce this state to accept thereof, in full confidence that congress will, in justice to this state, for the liberal cession she hath made, earnestly press upon the other states, claiming large tracts of waste and uncultivated territory, the propriety of making cessions equally liberal, for the common benefit and support of the Union:

Delegates empowered to convey.

Be it enacted by the General Assembly, That it shall and may be lawful for the delegates of this state to the congress of the United States, or such of them as shall be assembled in congress, and the said delegates, or such of them so assembled, are hereby fully authorized and empowered, for and on behalf of

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this state, by proper deed or instrument in writing, under their hands and seals, to convey, transfer, assign, and make over unto the United States in congress assembled, for the benefit of the said states, all right, title, and claim, as well of soil as jurisdiction, which this Commonwealth hath to the territory or tract of country, within the limits of the Virginia charter, situate, lying, and being to the northwest of the river Ohio, subject to the terms and conditions contained in the before recited act of congress of the thirteenth day of September last, that is to say: upon condition that the territory so ceded shall be laid out Conditions. and formed into states, containing suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit; and that the states so formed shall be distinct republican states and admitted members of the Federal Union, having the same rights of sovereignty, freedom, and independence, as the other states; that the necessary and reasonable expenses incurred by this state in subduing any British posts, or in maintaining forts or garrisons within and for the defence, or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States; and that one commissioner shall be appointed by congress, one by this Commonwealth, and another by those two commissioners, who, or a majority of them, shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this state, which they shall judge to be comprised within the intent and meaning of the act of congress of the tenth of October, one thousand seven hundred and eighty, respecting such expenses. That the French and Canadian inhabitants, and other settlers of the Kaskaskias, St. Vincents, and the neighboring villages, who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties: that a Reservations. quantity not exceeding one hundred and fifty thousand acres of land, promised by this state, shall be allowed and granted to the then Colonel, now General George Rogers Clarke, and to the officers and soldiers of his regiment, who marched with him when the posts of Kaskaskias and St. Vincents were reduced, and to the officers and soldiers that have been since incorporated into the said regiment, to be laid off in one tract, the length of which is not to exceed double the breadth, in such place on the northwest side of the Ohio as a majority of the officers

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shall choose, and to be afterwards divided among the said officers and soldiers in due proportion, according to the laws of Virginia: that in case the quantity of good lands on the south-east side of the Ohio, upon the waters of Cumberland river, and between the Green river and Tennessee river, which have been reserved by law for the Virginia troops upon continental establishment, should, from the North Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops in good lands, to be laid off between the rivers Scioto and Little Miami, on the northwest side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia: that all the lands within the territory so ceded to the United States, and not reserved for, or appropriated to, any of the beforementioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the confederation, or federal alliance of the said states, Virginia inclusive, according to their usual respective proportions, in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever: provided, that the trust hereby reposed in the delegates of this state shall not be executed, unless three of them, at least, are present in congress.*

All the lands ceded to be a common fund for the members of the federal alliance and for no other use

Three members at least to execute the trust.

ACT OF VIRGINIA.

An Act concerning the territory ceded by this Commonwealth to the United States.

[Passed December 30, 1788.]

Preamble.

1. Whereas, The United States in congress assembled, did, on the seventh day of July, in the year of our Lord, one thousand seven hundred and eighty-six, state certain reasons, shewing that a division of the territory which hath been

*Agreeably to the above recited act, the territory therein alluded to, was, on the first day of March, 1784, transferred to the United States, by deed, signed by Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, then delegates in congress from the Commonwealth of Virginia.—(*See vol.* 1, *page* 472, *U. S. Laws.*)

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ceded to the said United States by this Commonwealth, into states, in conformity to the terms of cession, should the same be adhered to, would be attended with many inconveniences, and did recommend a revision of the act of cession, so far as to empower congress to make such a division of the said territory into distinct and republican states, not more than five nor less than three in number, as the situation of that country and future circumstances might require: and the said United States in congress assembled, have, in an ordinance for the government of the territory northwest of the river Ohio, passed on the thirteenth of July, one thousand seven hundred and eighty-seven, declared the following as one of the articles of compact between the original states, and the people and states in the said territory, viz:

[Here the fifth article of compact of the ordinance of congress of 13th July, 1787, is recited verbatim.]

And it is expedient that this Commonwealth do assent to the proposed alteration so as to ratify and confirm the said article of compact between the original states, and the people and states in the said territory:

2. *Be it therefore enacted by the General Assembly,* That the afore recited article of compact between the original states, and the people and the states in the territory northwest of the Ohio river, be, and the same is hereby ratified and confirmed, anything to the contrary, in the deed of cession of the said territory by this Commonwealth to the United States, notwithstanding.

An article of the compact between the U. S. and the people and states N. W. of the Ohio, ratified by this commonwealth.

SEVENTH section of an act of the Commonwealth of Virginia, entitled "an act concerning the erection of the district of Kentucky into an independent state," (passed December 18th, 1789).

(See Revised Laws of Virginia, 1st vol. page 59.)

SECTION 7. That the use and navigation of the river Ohio, so far as the territory of the proposed state, or the territory which shall remain within the limits of this Commonwealth lies therein, shall be free and common to the citizens of the United States; and the respective jurisdictions of this Commonwealth and of the proposed state, on the river as aforesaid, shall be concurrent only with the states which may possess the opposite shores of the said river.

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ORDINANCE OF CONGRESS.

IN CONGRESS, JULY 13, 1787.

An Ordinance for the government of the territory of the United States northwest of the river Ohio.

Be it ordained by the United States in Congress assembled, That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of congress, make it expedient.

Rules of inheritance, &c.

Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grand child to take the share of their deceased parent in equal parts among them: and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving, in all cases, to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force, until altered by the legislature of the district. And until the governor and judges shall adopt laws as herein after mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered, by the person, being of full age, in whom the estate may be, and attested by two witnesses: provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers, shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the

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Kaskaskias, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by congress: he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office. Governor.

There shall be appointed, from time to time, by congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months to the secretary of congress: There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commission shall continue in force during good behavior. Secretary.

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original states, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to congress from time to time; which laws shall be in force in the district, until the organization of the general assembly therein, unless disapproved of by congress; but afterwards the legislature shall have authority to alter them as they shall think fit. Adoption and publication of laws.

The governor, for the time being, shall be commander in chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by congress. Officers of militia.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties Appointment of magistrates, &c.

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of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

Civil divisions of the district.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships; subject, however, to such alterations as may thereafter be made by the legislature.

Right of representation; general assembly, &c.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: provided, that for every five hundred free male inhabitants, there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature: provided, that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and in either case, shall likewise hold, in his own right, in fee simple, two hundred acres of land within the same: provided, also, that a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

Constitution of the legislative power, &c.

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to con-

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tinue in office five years, unless sooner removed by congress; any three of whom to be a quorum: and the members of the council shall be nominated and appointed in the following manner, to-wit:—As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to congress; five of whom congress shall appoint and commission to serve as aforesaid: and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to congress; one of whom congress shall appoint and commission for the residue of the term: And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons qualified as aforesaid and return their names to congress; five of whom congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws, in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when, in his opinion, it shall be expedient.

Oath of fidelity and of office to be taken.

The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the president of congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to congress, who shall have a seat in congress, with a right of debating, but not of voting, during this temporary government.

Delegates to congress.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and go-

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vernments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of states and permanent government therein, and for their admission to a share in the federal councils, on an equal footing with the original states, at as early periods as may be consistent with the general interest:

It is hereby ordained and declared, by the authority aforesaid, That the following articles shall be considered as articles of compact between the original states, and the people and states in the said territory, and forever remain unalterable, unless by common consent, to-wit:

Articles of compact, &c.

ART. 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ART. 2. The inhabitants of the said territory shall always be entitled to the benefit of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with, or affect private contracts or engagements, bona fide, and without fraud, previously formed.

ART. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by congress; but laws founded in

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justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. 4. The said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new states, as in the original states, within the time agreed upon by the United States in congress assembled. The legislatures of those districts, or new states, shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary, for securing the title in such soil, to the bona fide purchasers. No tax shall be imposed on lands, the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ART. 5. There shall be formed in the said territory, not less than three, nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession and consent to the same,* shall become fixed and established as follows, to-wit: The western state in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the

(*See consent of Virginia, page 18.)

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Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash, from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: provided, however, and it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered, that, if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory, which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the congress of the United States, on an equal footing with the original states, in all respects whatever; and shall be at liberty to form a permanent constitution and state government: provided the constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

Art. 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: provided, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

ACT OF CONGRESS.

An Act to provide for the government of the territory northwest of the river Ohio.

[Approved August 7, 1789.]

Whereas, in order that the ordinance of the United States in congress assembled, for the government of the territory northwest of the river Ohio, may continue to have full effect, it

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is requisite that certain provisions should be made, so as to adapt the same to the present constitution of the United States:

Governor to make communication to the president of the United States.

SECT. 1. *Be it enacted by the senate and house of representatives of the United States of America in Congress assembled*, That in all cases in which, by the said ordinance, any information is to be given, or communication made, by the governor of the said territory, to the United States in congress assembled, or to any of their officers, it shall be the duty of the said governor to give such information, and to make such communication to the president of the United States; and the president shall nominate, and by and with the advice and consent of the Senate, shall appoint all officers, which, by the said ordinance, were to have been appointed by the United States in congress assembled; and all officers, so appointed, shall be commissioned by him; and, in all cases where the United States in congress assembled, might, by the said ordinance, revoke any commission or remove from any office, the president is hereby declared to have the same powers of revocation and removal.

President and senate to appoint territorial officers.

President to commission:

And remove.

In case of death, removal, &c. the secretary to execute the power of governor during the vacancy.

SECT. 2. *And be it further enacted*, That in case of the death, removal, resignation, or necessary absence of the governor of the said territory, the secretary thereof shall be, and he is hereby authorized and required to execute all the powers, and perform all the duties of the governor, during the vacancy occasioned by the removal, resignation, or necessary absence of the said governor.

ACT OF CONGRESS.

An Act respecting the government of the territories of the United States northwest and south of the river Ohio.

[APPROVED MAY 8, 1792.]

Laws of the territory northwest of the river Ohio to be printed, &c. 200 copies, and 10 sets of the laws of the United States to be delivered, &c.

SECT. 1. *Be it enacted, &c.* That the laws of the territory northwest of the Ohio, that have been, or hereafter may be, enacted by the governor and judges thereof, shall be printed, under the direction of the secretary of state, and two hundred copies thereof, together with ten sets of the laws of the United States, shall be delivered to the said governor and judges, to be

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distributed among the inhabitants, for their information, and that a like number of the laws of the United States shall be delivered to the governor and judges of the territory southwest of the river Ohio.

Governor and judges of the territory north-west of the Ohio authorized to repeal their laws, &c.

SECT. 2. That the governor and judges of the territory north-west of the river Ohio, shall be, and hereby are, authorized to repeal their laws, by them made, whensoever the same may be found to be improper.

Official duties of secretaries, under the control of territorial laws.

SECT. 3. That the official duties of the secretaries of the said territories shall be under the control of such laws as are, or may be in force in the said territories.

One supreme or superior judge may hold court, in the absence of the others.

SECT. 4. That any one of the supreme or superior judges of the said territories, in the absence of the other judges, shall be, and hereby is authorized to hold a court.

The secretary of state to provide seals for the territorial offices.

SECT. 5. That the secretary of state provide proper seals for the several and respective public offices in the said territories.

The limitation act passed by the governor and judges disapproved.

SECT. 6. That the limitation act, passed by the governor and judges of the said territory, the twenty-eighth day of December, one thousand seven hundred and eighty-eight, be, and hereby is disapproved.

SECT. 7. That the expenses incurred by John Cleves Symmes and George Turner, two of the judges of the said territory, in sending an express, and in purchasing a boat to go the circuit, in the year one thousand seven hundred and ninety, shall be liquidated by the officers of the treasury, and paid out of the treasury of the United States.

ACT OF CONGRESS.

An Act to divide the territory of the United States northwest of the Ohio into two separate governments.

[APPROVED MAY 7, 1800.]

SECTION 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled,* That from and after the fourth day of July next, all that part of

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the territory of the United States northwest of the Ohio river, which lies westward of the line beginning at the Ohio, opposite to the mouth of Kentucky river, and running thence to Fort Recovery, and thence north, until it shall intersect the territorial line between the United States and Canada, shall, for the purpose of temporary government, constitute a separate territory, and be called the Indiana territory.

The Indiana territory constituted, its boundaries, &c.

SECT. 2. *And be it further enacted*, That there shall be established within the said territory, a government, in all respects similar to that provided by the ordinance of congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States northwest of the river Ohio; and the inhabitants thereof shall be entitled to, and enjoy, all and singular, the rights, privileges, and advantages granted and secured to the people by the said ordinance.

Government of Indiana territory the same as that established by ordinance of 13th July, 1787, &c.

SECT. 3. *And be it further enacted*, That the officers for the said territory, who, by virtue of this act, shall be appointed by the president of the United States, by and with the advice and consent of the senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations, as, by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the territory of the United States northwest of the river Ohio: And the duties and emoluments of superintendent of Indian affairs shall be united with those of governor: provided, that the president of the United States shall have full power, in the recess of congress, to appoint and commission all officers herein authorized; and their commissions shall continue in force until the end of the next session of congress.

Officers of the territory to be appointed by the president and senate to perform the duties and receive the compensations, provided, &c. by ordinance and the laws, for similar officers in the N. W. territory, &c.

Proviso.

SECT. 4. *And be it further enacted*, That so much of the ordinance for the government of the territory of the United States northwest of the Ohio river, as relates to the organization of a general assembly therein, and prescribes the powers thereof, shall be in force and operate in the Indiana territory, whenever satisfactory evidence shall be given to the governor thereof, that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards:

So much of the ordinance, &c. as relates to the organization of the general assembly in the northwest territory, &c. to operate in the Indiana territory, &c.

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Proviso. provided, that until there shall be five thousand free male inhabitants of twenty-one years and upwards, in said territory, the whole number of representatives to the general assembly shall not be less than seven, nor more than nine, to be apportioned by the governor to the several counties in said territory, agreeably to the number of free males, of the age of twenty-one years and upwards, which they may respectively contain.

Nothing in this act to affect the government in force in the northwest territory, except as to the Indiana territory, &c.

SECT. 5. *And be it further enacted*, That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the territory of the United States northwest of the Ohio river, further than to prohibit the exercise thereof within the Indiana territory, from and after the aforesaid fourth day of July next: provided, that whenever that part of the territory of the United States which lies to the eastward of a line beginning at the mouth of the Great Miami river, running thence due north to the territorial line between the United States and Canada, shall be erected into an independent state, and admitted into the union on an equal footing with the original states, thenceforth said line shall become and remain permanently the boundary line between such state and the Indiana territory; any thing in this act contained to the contrary notwithstanding.

Proviso.

Chillicothe the seat of government for the northwest territory, and St. Vincennes the seat of government for Indiana, &c.

SECT. 6. *And be it further enacted*, That until it shall be otherwise ordered by the legislatures of the said territories, respectively, Chillicothe, on the Scioto river, shall be the seat of the government of the territory of the United States northwest of the Ohio river; and that Saint Vincennes, on the Wabash river, shall be the seat of government for the Indiana territory.

ACT OF CONGRESS.

An Act for dividing the Indiana territory into two separate governments.

[APPROVED FEBRUARY 3, 1809.]

Illinois territory formed.

SECTION 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That from and after the first day of March next, all that part of the Indiana territory which lies west of the Wabash river, and

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a direct line drawn from the said Wabash river and Post Vincennes due north, to the territorial line between the United States and Canada, shall, for the purpose of temporary government, constitute a separate territory, and be called Illinois.

Government thereof.

SECT. 2. *And be it further enacted*, That there shall be established within the said territory a government in all respects similar to that provided by the ordinance of congress, passed on the thirteenth day of July, one thousand seven hundred and eigty-seven, for the government of the territory of the United States northwest of the river Ohio, and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled "An act to provide for the government of the territory northwest of the river Ohio;" and the inhabitants thereof shall be entitled to, and enjoy all and singular, the rights, privileges, and advantages, granted and secured to the people of the territory of the United States, northwest of the river Ohio, by the said ordinance.

Officers, how appointed.

SECT. 3. *And be it further enacted*, That the officers for the said territory who, by virtue of this act, shall be appointed by the president of the United States, by and with the advice and consent of the senate, shall, respectively, exercise the same powers, perform the same duties, and receive for their services the same compensations, as, by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the Indiana territory. And the duties and emoluments of superintendent of Indian affairs shall be united with those of governor: provided, that the president of the United States shall have full power, in the recess of congress, to appoint and commission all officers herein authorized, and their commissions shall continue in force until the end of the next session of congress.

Proviso.

Organization of a gen. assembly.

SECT. 4. *And be it further enacted*, That so much of the ordinance for the government of the territory of the United States northwest of the river Ohio, as relates to the organization of a general assembly therein, and prescribes the powers thereof, shall be in force and operate in the Illinois territory, whenever satisfactory evidence shall be given to the governor thereof that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards: provided, that, until there shall be five thousand free male inha-

Proviso.

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bitants of twenty-one years and upwards in said territory, the whole number of representatives to the general assembly shall not be less than seven, nor more than nine, to be apportioned by the governor to the several counties in the said territory, agreeably to the number of free males of the age of twenty-one years and upwards, which they may respectively contain.

Government of Indiana ter. not affected.

SECT. 5. *And be it further enacted*, That nothing in this act contained, shall be construed so as, in any manner, to affect the government now in force in the Indiana territory, further than to prohibit the exercise thereof within the Illinois territory, from and after the aforesaid first day of March next.

Provision as to suits pending.

SECT. 6. *And be it further enacted*, That all suits, process, and proceedings, which, on the first day of March next, shall be pending in the court of any county which shall be included within the said territory of Illinois, and also all suits, process, and proceedings, which, on the said first day of March next, shall be pending in the general court of the Indiana territory, in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the territory of Illinois aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Indiana territory had remained undivided.

Taxes to be still collected.

SECT. 7. *And be it further enacted*, That nothing in this act contained shall be so construed as to prevent the collection of taxes which may, on the first day of March next, be due to the Indiana territory on lands lying in the said territory of Illinois.

Seat of government.

SECT. 8. *And be it further enacted*, That, until it shall be otherwise ordered by the legislature of the said Illinois territory, Kaskaskia, on the Mississippi river, shall be the seat of government for the said Illinois territory.

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ACT OF CONGRESS.

An Act to enable the people of the Indiana territory to form a constitution and state government, and for the admission of such state into the Union on equal footing with the original states.

[Approved April 19, 1816.]

Section 1. *Be it enacted by the senate and house of representatives of the United States of America, in congress assembled,* That the inhabitants of the territory of Indiana be, and they are hereby authorized, to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the Union upon the same footing with the original states, in all respects whatever. Inhabitants authorized to form a constitution, &c.

Sect. 2. *And be it further enacted,* That the said state shall consist of all the territory included within the following boundaries, to-wit: Bounded on the east by the meridian line which forms the western boundary of the state of Ohio; on the south, by the river Ohio, from the mouth of the great Miami river to the mouth of the river Wabash; on the west, by a line drawn along the middle of the Wabash, from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the northwestern shore of the said river; and from thence, by a due north line, until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north, by the said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the state of Ohio: provided, that the convention hereinafter provided for, when formed, shall ratify the boundaries aforesaid; otherwise they shall be and remain as now prescribed by the ordinance for the government of the territory northwest of the river Ohio: provided, also, that the said states shall have concurrent jurisdiction on the river Wabash, with the state to be formed west thereof, so far as the said river shall form a common boundary to both. Boundaries of the state. Proviso. Proviso.

Sect. 3. *And be it further enacted,* That all male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said territory at least one year previous to the day of election, and shall have paid a Qualifications of electors.

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county or territorial tax; and all persons having in other respects the legal qualifications to vote for representatives in the general assembly of the said territory, be, and they are hereby authorized to choose representatives to form a convention, who shall be apportioned amongst the several counties within the said territory, according to the apportionment made by the legislature thereof, at their last session, to-wit: From the county of Wayne, four representatives; from the county of Franklin, five representatives; from the county of Dearborn, three representatives; from the county of Switzerland, one representative; from the county of Jefferson, three representatives; from the county of Clark, five representatives; from the county of Harrison, five representatives; from the county of Washington, five representatives; from the county of Knox, five representatives; from the county of Gibson, four representatives; from the county of Posey, one representative; from the county of Warrick, one representative; and from the county of Perry, one representative. And the election for the representatives aforesaid, shall be holden on the second Monday of May, one thousand eight hundred and sixteen, throughout the several counties in the said territory; and shall be conducted in the same manner, and under the same penalties, as prescribed by the laws of said territory regulating elections therein for members of the house of representatives.

Apportionment.

Convention, time and place of meeting.

SECT. 4. *And be it further enacted*, That the members of the convention, thus duly elected, be, and they are hereby authorized to meet at the seat of the government of the said territory on the second Monday of June next; which convention when met, shall first determine, by a majority of the whole number elected, whether it be or be not expedient, at that time, to form a constitution and state government for the people within the said territory; and if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and state government; or if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government, which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place, as shall be prescribed by the said ordinance; and shall then form, for the people of said territory, a constitution and state government: provided, that the same, whenever formed, shall be republican, and not repugnant to those articles of the ordinance of the thir-

Its powers and duties.

Proviso.

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teenth of July, one thousand seven hundred and eighty-seven, which are declared to be irrevocable between the original states and the people and states of the territory northwest of the river Ohio; excepting so much of said articles as relates to the boundaries of the states therein to be formed.

One representative in congress.

SECT. 5. *And be it further enacted*, That until the next general census shall be taken, the said state shall be entitled to one representative in the house of representatives of the United States.

Propositions to the convention.

SECT. 6. *And be it further enacted*, That the following propositions be, and the same are hereby offered to the convention of the said territory of Indiana, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States:

School section.

First. That the section numbered sixteen, in every township, and when such section has been sold, granted, or disposed of, other lands, equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township for the use of schools.

Salt springs reserved.

Second. That all salt springs within the said territory, and the land reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt springs, not exceeding in the whole, the quantity contained in thirty-six entire sections, shall be granted to the said state, for the use of the people of the said state, the same to be used under such terms, conditions, and regulations as the legislature of the said state shall direct: provided the said legislature shall never sell nor lease the same, for a longer period than ten years at any one time.

Proviso.

Five per cent. for roads and canals.

Third. That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state under the direction of congress.

Seminary township.

Fourth. That one entire township, which shall be designated by the President of the United States, in addition to the one

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heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said state, to be appropriated solely to the use of such seminary by the said legislature.

Seat of government donation.

Fifth. That four sections of land be, and the same are hereby granted to the said state, for the purpose of fixing their seat of government thereon, which four sections shall, under the direction of the legislature of said state, be located at any time in such township and range as the legislature aforesaid may select, on such lands as may hereafter be acquired by the United States, from the Indian tribes within said territory: provided, that such locations shall be made prior to the public sale of the lands of the United States, surrounding such location: *And provided always*, that the five foregoing propositions herein offered, are on the conditions, that the convention of the said state shall provide by an ordinance irrevocable, without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of December next, shall be and remain exempt from any tax, laid by order or under any authority of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years, from and after the day of sale.

Proviso.

Lands sold by the U. States to be exempt from taxation for five years.

ORDINANCE.

Propositions of congress accepted.

Be it ordained by the representatives of the people of the territory of Indiana, in convention met at Corydon, on Monday the tenth day of June, in the year of our Lord eighteen hundred and sixteen, That we do, for ourselves and our posterity, agree, determine, declare, and ordain, that we will, and do hereby, accept the propositions of the congress of the United States, as made and contained in their act of the nineteenth day of April, eighteen hundred and sixteen, entitled, "an act to enable the people of the Indiana territory to form a state government and constitution, and for the admission of such state into the Union, on an equal footing with the original states."

And we do, further, for ourselves and our posterity, hereby ratify, confirm, and establish, the boundaries of the said state of Indiana, as fixed, prescribed, laid down, and established, in the act of congress aforesaid; and we do also, further, for ourselves

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and our posterity, hereby agree, determine, declare, and ordain, that each and every tract of land sold by the United States, lying within the said State, and which shall be sold from and after the first day of December next, shall be and remain exempt from any tax laid by order, or under any authority of the said state of Indiana, or by or under the authority of the general assembly thereof, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale of any such tract of land; and we do, moreover, for ourselves and our posterity, hereby declare and ordain, that this ordinance, and every part thereof, shall forever be and remain irrevocable and inviolate, without the consent of the United States, in congress assembled, first had and obtained for the alteration thereof, or any part thereof.

Lands sold by the U. States exempt from taxation.

This ordinance irrevocable.

JONATHAN JENNINGS,
President of the Convention.

Attest:

WILLIAM HENDRICKS, *Secretary.*

June 29, 1816.

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CONSTITUTION

OF THE

STATE OF INDIANA.

ART. 1. Of the declaration of rights.
2. Of the division of the powers of government.
3. Of the legislative authority.
4. Of the executive department.
5. Of the judiciary.
6. Of elections.
7. Of the militia.
8. Of amendments.
9. Of education.
10. Of banks.
11. Of miscellaneous.
12. Of miscellaneous.

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION
1. Natural rights declared.
2. All power inherent in the people.
3. Freedom of worship.—No preference to religious societies to be given, or religious test established.
4. Freedom of elections.
5. Trial by jury in civil cases over 20 dollars, and in all criminal cases, except petit misdemeanors.
6. Laws not to be suspended.
7. Compensation to be made for services and property taken.
8. Unreasonable searches prohibited, unless on probable cause.—Oath required.
9. Freedom of the press and of speech.

SECTION
10. Truth may be given in evidence in certain prosecutions for publishing papers, libels, &c.—Jury to determine law and fact.
11. Justice to be administered without denial or delay.
12. Unnecessary rigor prohibited.—None put to answer but by presentment, indictment, or impeachment.
13. Speedy public trial by jury.—Rules for conducting the same.
14. Bail, when allowed.—*Habeas corpus* not to be suspended.
15. Excessive bail, fines, and cruel punishments prohibited.
16. Penalties to be proportioned to offence.
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PREAMBLE.

Preamble.

WE, the representatives of the people of the territory of Indiana, in convention met at Corydon, on Monday, the tenth day of June, in the year of our Lord eighteen hundred and sixteen, and of the independence of the United States the fortieth, having the right of admission into the general government, as a member of the union, consistent with the constitution of the United States, the ordinance of congress of one thousand seven hundred and eighty-seven, and the law of congress entitled, "An act to enable the people of Indiana territory to form a constitution and state government, and for the admission of such state into the union on an equal footing with the original states," in order to establish justice, promote the welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish the following constitution or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of THE STATE OF INDIANA.

ARTICLE I.

Natural rights.

SECTION 1. That the general, great, and essential principles of liberty and free government may be recognized, and unalterably established: WE DECLARE, That all men are born equally free and independent, and have certain natural, inherent, and unalienable rights: among which are, the enjoying and defending life and liberty, and of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

All power inherent in the people.

SECT. 2. That all power is inherent in the people; and all free governments are founded on their authority, and instituted for their peace, safety, and happiness. For the advancement of these ends, they have, at all times, an unalienable and indefeasible right to alter or reform their government in such manner as they may think proper.

Freedom of worship.

SECT. 3. That all men have a natural and indefeasible right to worship ALMIGHTY GOD according to the dictates of their own consciences: That no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent: That no human authority can, in

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any case whatever, control or interfere with the rights of conscience: And that no preference shall ever be given by law to any religious societies, or modes of worship; and no religious test shall be required as a qualification to any office of trust or profit.

No preference to religious societies. No religious test.

Elections free.

SECT. 4. That elections shall be free and equal.

Trial by jury in civil cases over 20 dollars, and in all criminal cases (1). Exception.

SECT. 5. That in all civil cases, where the value in controversy shall exceed the sum of twenty dollars, and in all criminal cases, except in petit misdemeanors, which shall be punished by fine only, not exceeding three dollars, in such manner as the legislature may prescribe by law, the right of trial by jury shall remain inviolate.

Laws not to be suspended.

SECT. 6. That no power of suspending the operation of the laws shall be exercised, except by the legislature, or its authority.

Compensation for services and property (3).

SECT. 7. That no man's particular services shall be demanded, or property taken or applied to public use, without the consent of his representatives, or without a just compensation being made therefor.

Unreasonable searches prohibited.

Probable cause, oath, &c. required.

SECT. 8. The rights of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Freedom of the press and speech.

SECT. 9. That the printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write, and print, on any subject, being responsible for the abuse of that liberty.

Prosecut'ns for publication of papers, libels, &c.—truth given in evidence.

Jury to determine law and fact.

SECT. 10. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for the public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

(1) *Armstrong* v. *Jackson*, 1 Blackf. 375. *Dawson* v. *Shaver*, et al., ib. 204. *Batson* v. *Lasselle*, ib. 119. *State* v. *M'Coy*, 2 Blackf. 5. *State* v. *Mead*, 4 Blackf. 309. *State* v. *Odell*, 4 Blackf. 156.

(3) *Bank Vincennes S. B.* v. *State*, 1 Blackf. 267. *Rubottom* v. *M'Clure*, 4 Blackf. 505.

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Justice, without denial or delay.

SECT. 11. That all courts shall be open, and every person, for an injury done him, in his lands, goods, person, or reputation, shall have remedy by the due course of law; and right and justice administered without denial or delay.

Unnecessary rigor prohibited. No person put to answer, but by presentment, indictment, or impeachment (1).

SECT. 12. That no person arrested, or confined in jail, shall be treated with unnecessary rigor, or be put to answer any criminal charge, but by presentment, indictment, or impeachment.

Speedy public trial by jury. Rules for conducting the same.

SECT. 13. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or presentment, a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed; and shall not be compelled to give evidence against himself, nor shall be twice put in jeopardy for the same offence.

Not twice for same offence (2).

Bail to be allowed.

SECT. 14. That all persons shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or the presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless, in case of rebellion or invasion, the public safety may require it.

Habeas corpus not to be suspended.

Excessive bail, fines, and punishments prohibited.

SECT. 15. Excessive bail shall not be required, excessive fines shall not be imposed, nor cruel and unusual punishments inflicted.

Penalties proportioned to offence.

SECT. 16. All penalties shall be proportioned to the nature of the offence.

Debtors not to be continued in jail after, &c.

SECT. 17. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditor or creditors, in such manner as shall be prescribed by law.

Ex post facto law, and impairing of contracts prohibited (3).

No corruption of blood or forfeiture of estate.

SECT. 18. No *ex post facto* law, nor any law impairing the validity of contracts, shall ever be made; and no conviction shall work corruption of blood, nor forfeiture of estate.

Right of people to assemble to instruct and petition.

SECT. 19. That the people have a right to assemble together, in a peaceable manner, to consult for their common good, to in-

(1) *S. B. Vincennes* v. *State*, 1 Blackf. 267. (2) *State* v. *Davis*, 4 Blackf. 345.
(3) *Strong* v. *State*, 1 Blackf. 193. *Lewis* v. *Breckenridge*, ib. 220. *Elwell* v. *Tucker*, ib. 285. *Tolen* v. *Tolen*, 2 Blackf. 407. *Pugh* v. *Bussell*, ib. 394. *Armstrong*, et al., v. *Board County Commissioners*, 4 Blackf. 208.

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struct their representatives, and to apply to the legislature for redress of grievances.

Right to bear arms (1). Military to be subservient.

SECT. 20. That the people have a right to bear arms for the defence of themselves and the state; and that the military shall be kept in strict subordination to the civil power.

Soldiers not to be quartered.

SECT. 21. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

No title of nobility, &c.

SECT. 22. That the legislature shall not grant any title of nobility, or hereditary distinctions, nor create any office, the appointment to which shall be for a longer term than good behavior.

Emigration not to be prohibited.

SECT. 23. That emigration from the state shall not be prohibited.

Rights retained and excepted.

SECT. 24. To guard against any encroachments on the rights herein retained, we declare, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolable.

ARTICLE II.

Three departments of government.

The powers of the government of Indiana, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to-wit: those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another; and no person or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

ARTICLE III.

Legislative authority, how vested.

SECTION 1. The legislative authority of this state shall be vested in a general assembly, which shall consist of a senate and house of representatives, both to be elected by the people.

Enumeration and apportionment every five years.

SECT. 2. The general assembly may, within two years after their first meeting, and shall, in the year eighteen hundred and twenty, and every subsequent term of five years, cause an enumeration to be made of all the white male inhabitants above

(1) *State* v. *Mitchell*, 3 Blackf. 229.

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the age of twenty-one years. The number of representatives shall, at the several periods of making such enumeration, be fixed by the general assembly, and apportioned among the several counties, according to the number of white male inhabitants above twenty-one years of age, in each; and shall never be less than twenty-five nor greater than thirty-six, until the number of white male inhabitants above twenty-one years of age, shall be twenty-two thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-six nor exceed one hundred. Representatives, how apportioned.

SECT. 3. The representatives shall be chosen annually, by the qualified electors of each county, respectively, on the first Monday of August. How chosen.

SECT. 4. No person shall be a representative, unless he shall have attained the age of twenty-one years; and shall be a citizen of the United States, and an inhabitant of this state; and shall also have resided within the limits of the county in which he shall be chosen, one year next preceding his election, if the county shall have been so long erected; but if not, then within the limits of the county or counties out of which it shall have been taken, unless he shall have been absent on the public business of the United States, or of this state, and shall have paid a state or county tax. Qualifications.

SECT. 5. The senators shall be chosen for three years, on the first Monday in August, by the qualified voters for representatives; and on their being convened, in consequence of the first election, they shall be divided by lot, from their respective counties or districts, as near as can be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the first year; and the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that one third thereof, as near as possible, may be annually chosen, forever thereafter. Senators how chosen and classed.

SECT. 6. The number of senators shall, at the several periods of making the enumeration beforementioned, be fixed by the general assembly, and apportioned among the several counties or districts, to be established by law, according to the number of white male inhabitants of the age of twenty-one years in each, and shall never be less than one third, nor more than one half of the number of representatives. When and how apportioned.

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Qualifications.

SECT. 7. No person shall be a senator, unless he shall have attained the age of twenty-five years, and shall be a citizen of the United States, and shall, next preceding the election, have resided two years in the state, the last twelve months of which in the county or district in which he may be elected, if the county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken; unless he shall have been absent on the public business of the United States, or of this state, and shall, moreover, have paid a state or county tax.

Speaker and officers, how chosen.

Powers of each house.

Two thirds of each house, a quorum.

SECT. 8. The house of representatives, when assembled, shall choose a speaker and its other officers; and the senate shall choose its officers, except the president; and each shall be judges of the qualifications and elections of its members, and sit upon its own adjournments. Two thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

Journal.

Yeas and nays.

SECT. 9. Each house shall keep a journal of its proceedings, and publish them. The yeas and nays of the members, on any question, shall, at the request of any two of them, be entered on the journals.

Protest.

SECT. 10. Any one member of either house shall have liberty to dissent from, and protest against, any act or resolution, which he may think injurious to the public, or any individual or individuals, and have the reason of his dissent entered on the journals.

Rules.

Power to expel.

SECT. 11. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

Vacancies, how filled.

SECT. 12. When vacancies happen in either branch of the general assembly, the governor, or the person exercising the power of governor, shall issue writs of election to fill such vacancies.

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SECT. 13. Senators and representatives shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest, during the session of the general assembly, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place. Privilege.

SECT. 14. Each house may punish, by imprisonment, during their session, any person not a member, who shall be guilty of any disrespect to the house, by any disorderly or contemptuous behavior in their presence; provided such imprisonment shall not, at any one time, exceed twenty-four hours. May punish contempts.

SECT. 15. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as in the opinion of the house, may require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two houses shall be sitting. Proceedings to be public. Adjournment restricted.

SECT. 16. Bills may originate in either house, but may be altered, amended, or rejected, by the other. Either house may originate bills.

SECT. 17. Every bill shall be read on three different days in each house, unless, in case of urgency, two-thirds of the house where such bill may be depending, shall deem it expedient to dispense with this rule: And every bill, having passed both houses, shall be signed by the president and speaker of their respective houses. Number of readings. How signed.

SECT. 18. The style of the laws of this state shall be, "Be it enacted by the general assembly of the state of Indiana." Style of laws.

SECT. 19. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject, as in other bills. Revenue bills.

SECT. 20. No person, holding any office under the authority of the president of the United States, or of this State, militia officers excepted, shall be eligible to a seat in either branch of the general assembly, unless he resign his office previous to his election; nor shall any member of either branch of the general assembly, during the time for which he is elected, be eligible to any office, the appointment of which is vested in the general assembly: provided, that nothing in this constitution shall be so Persons not eligible.

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construed as to prevent any member of the first session of the general assembly from accepting any office that is created by this constitution, or the constitution of the United States, and the salaries of which are established.

Money, how drawn from treasury.

SECT. 21. No money shall be drawn from the treasury, but in consequence of appropriations made by law.

Receipts and expenditures to be published.

SECT. 22. An accurate statement of the receipts and expenditures of the public money shall be attached to, and published with, the laws, at every annual session of the general assembly.

Impeachment.

SECT. 23. The house of representatives shall have the sole power of impeaching; but a majority of all the members elected must concur in such impeachment. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath or affirmation, to do justice according to law and evidence. No person shall be convicted without the concurrence of a majority of all the senators elected.

For what crimes, and effect of judgment.

SECT. 24. The governor, and all civil officers of the state, shall be removed from office, on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, profit, or trust, under this state. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law.

Party may be indicted.

Sessions, when held.

SECT. 25. The first session of the general assembly shall commence on the first Monday of November next; and forever after, the general assembly shall meet on the first Monday in December, in every year, and at no other period, unless directed by law, or provided for by this constitution.

Defaulter not entitled to seat.

SECT. 26. No person, who hereafter may be a collector, or holder of public money, shall have a seat in either house of the general assembly, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

ARTICLE IV.

Executive power vested in a governor.

SECT. 1. The supreme executive power of this state shall be vested in a governor, who shall be styled the governor of the state of Indiana.

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SECT. 2. The governor shall be chosen by the qualified electors, on the first Monday in August, at the places where they shall respectively vote for representatives. The returns of every election for governor shall be sealed up, and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall open and publish them in the presence of both houses of the general assembly. The person having the highest number of votes shall be governor; but if two or more shall be equal, and highest in votes, one of them shall be chosen governor by the joint vote of the members of both houses. Contested elections shall be determined by a committee to be selected from both houses of the general assembly, and formed and regulated in such manner as shall be directed by law. How and when chosen. Returns. Contests.

SECT. 3. The governor shall hold his office during three years, from and after the third day of the first session of the general assembly, next ensuing his election, and until a successor shall be chosen and qualified, and shall not be capable of holding it longer than six years, in any term of nine years. Term of office.

SECT. 4. He shall be at least thirty years of age, and shall have been a citizen of the United States ten years, and have resided in the state five years next preceding his election, unless he shall have been absent on the business of the state, or of the United States: provided, that this shall not disqualify any person from the office of governor, who shall be a citizen of the United States, and shall have resided in the Indiana territory two years next preceding the adoption of this constitution. Qualifications.

SECT. 5. No member of congress, or person holding any office under the United States, or this state, shall exercise the office of governor or lieutenant governor. Who shall not be governor.

SECT. 6. The governor shall, at stated times, receive for his services, a compensation which shall neither be increased nor diminished, during the term for which he shall have been elected. Compensation not to be changed.

SECT. 7. He shall be commander in chief of the army and navy of this state, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he shall be advised so to do by a resolution of the general assembly. Commander in chief.

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To nominate, appoint, and commission officers.

Certain offices, how filled.

SECT. 8. He shall nominate, and, by and with the advice and consent of the senate, appoint and commission all officers, the appointment of which is not otherwise directed by this constitution; and all offices which may be created by the general assembly, shall be filled in such manner as may be directed by law.

Vacancies.

SECT. 9. Vacancies that may happen in offices, the appointment of which is vested in the governor and senate, or in the general assembly, shall be filled by the governor, during the recess of the general assembly, by granting commissions that shall expire at the end of the next session.

To remit fines, grant reprieves and pardons.

SECT. 10. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachments.

May call for information from executive officers.

SECT. 11. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

Communicate to general assembly.

SECT. 12. He shall, from time to time, give to the general assembly information of the affairs of the state, and recommend to their consideration such measures as he shall deem expedient.

Convene general assembly, or change place of meeting.

SECT. 13. He may, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; and in case of a disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the time of their next annual session.

May adjourn general assembly.

Shall see laws are executed.

SECT. 14. He shall take care that the laws be faithfully executed.

Lieutenant governor, how and when chosen, qualifications, &c.

SECT. 15. A lieutenant governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant governor.

President of senate.

SECT. 16. He shall, by virtue of his office, be president of the senate, have a right, when in committee of the whole, to debate, and vote on all subjects, and when the senate are equally divided, to give the casting vote.

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When to act as governor.

SECT. 17. In case of impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant governor shall exercise all the powers and authority appertaining to the office of governor, until another be duly qualified, or the governor absent or impeached, shall return, or be acquitted.

President of senate pro tem.

SECT. 18. Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as president of the senate, the senate shall elect one of their own members as president for that occasion. And if, during the vacancy of the office of governor, the lieutenant governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the president of the senate pro tem. shall, in like manner, administer the government, until he shall be superseded by a governor, or lieutenant governor. The lieutenant governor, while he acts as president of the senate, shall receive for his services the same compensation which shall, for the same period, be allowed to the speaker of the house of representatives, and no more: And during the time he administers the government, as governor, shall receive the same compensation which the governor would have received and been entitled to, had he been employed in the duties of his office, and no more.

Compensation of lieutenant governor.

Compensation of president pro tem.

SECT. 19. The president pro tempore of the senate, during the time he administers the government, shall receive, in like manner, the same compensation which the governor would have received, had he been employed in the duties of his office, and no more.

When sec'y of state may convene senate to choose a president.

SECT. 20. If the lieutenant governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the state, during the recess of the general assembly, it shall be the duty of the secretary of state, for the time being, to convene the senate for the purpose of choosing a president pro tempore.

Secretary of state, how chosen.

Term of office.

Duties.

SECT. 21. A secretary of state shall be chosen by the joint ballot of both houses of the general assembly, and be commissioned by the governor for four years, or until a new secretary be chosen and qualified. He shall keep a fair register, and attest all the official acts and proceedings of the governor; and shall, when required, lay the same and all papers, minutes and

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vouchers relative thereto, before either house of the general assembly; and shall perform such other duties as may be enjoined him by law.

Bills to be presented to governor for approval.

Proceedings on his refusal.

SECT. 22. Every bill which shall have passed both houses of the general assembly, shall be presented to the governor: if he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it shall have originated, who shall enter the objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that house, shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by a majority of all the members elected to that house, it shall be a law; but, in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor, within five days (Sundays excepted) after it shall have been presented to him, it shall be a law, in like manner as if he had signed it, unless the general adjournment prevents its return; in which case it shall be a law, unless sent back within three days after their next meeting.

Bill not returned, when to be a law.

Joint resolutions to receive same sanction as bills.

SECT. 23. Every resolution to which the concurrence of both houses may be necessary, shall be presented to the governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be repassed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.

Treasurer and auditor, how chosen and term of office.

SECT. 24. There shall be elected, by joint ballot of both houses of the general assembly, a treasurer and auditor, whose powers and duties shall be prescribed by law, and who shall hold their offices for three years, and until their successors be appointed and qualified.

Sheriffs and coroners, how chosen, term, &c.

SECT. 25. There shall be elected in each county, by the qualified electors thereof, one sheriff and one coroner, at the times and places of holding elections for members of the general assembly. They shall continue in office two years, and until successors shall be chosen and duly qualified: provided, that no person shall be eligible to the office of sheriff more than four years, in any term of six years.

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SECT. 26. There shall be a seal of this state, which shall be kept by the governor and used by him officially, and shall be called THE SEAL OF THE STATE OF INDIANA. State seal.

ARTICLE V.

SECTION 1. The judiciary power of this state, both as to matters of law and equity, shall be vested in one supreme court, in circuit courts, and in such other inferior courts as the general assembly may, from time to time, direct and establish. Judicial power, how vested.

SECT. 2. The supreme court shall consist of three judges, any two of whom shall form a quorum, and shall have appellate jurisdiction only, which shall be co-extensive with the limits of the state, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law: provided, nothing in this article shall be so construed as to prevent the general assembly from giving the supreme court original jurisdiction in capital cases, and cases in chancery where the president of the circuit court may be interested or prejudiced. Supreme court —jurisdiction.

SECT. 3. The circuit courts shall each consist of a president and two associate judges. The state shall be divided by law into three circuits, for each of which a president shall be appointed, who, during his continuance in office, shall reside therein. The president and associate judges, in their respective counties, shall have common law and chancery jurisdiction, as also complete criminal jurisdiction, in all such cases, and in such manner as may be prescribed by law. The president alone, in the absence of the associate judges, or the president and one of the associate judges, in the absence of the other, shall be competent to hold a court, as also the two associate judges, in the absence of the president, shall be competent to hold a court, except in capital cases, and cases in chancery: provided, that nothing herein contained shall prevent the general assembly from increasing the number of circuits and presidents, as the exigencies of the state may, from time to time, require. Circuit courts. Number of circuits. President judge where to reside. Jurisdiction. *State* v. *Fulton*, 1 *Blackf.* 63. *Smith* v. *Smith*, 4 *Blackf.* 132. Number of circuits may be increased.

SECT. 4. The judges of the supreme court, the circuit, and other inferior courts, shall hold their offices during the term of seven years, if they shall so long behave well; and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office. Term of office.

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Judges to be conservators of the peace.

SECT. 5. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the state, as also the presidents of the circuit courts in their respective circuits, and the associate judges in their respective counties.

Courts, where holden.

SECT. 6. The supreme court shall hold its sessions at the seat of government, at such times as shall be prescribed by law; and the circuit courts shall be held in the respective counties as may be directed by law.

Judges, how appointed.

SECT. 7. The judges of the supreme court shall be appointed by the governor, by and with the advice and consent of the senate. The presidents of the circuit courts shall be appointed by joint ballot of both branches of the general assembly; and the associate judges of the circuit courts, shall be elected by the qualified electors in the respective counties.

Clerks, how appointed.

SECT. 8. The supreme court shall appoint its own clerk, and the clerks of the circuit court, in the several counties, shall be elected by the qualified electors in the several counties; but no person shall be eligible to the office of clerk of the circuit court in any county, unless he shall first have obtained, from one or more of the judges of the supreme court, or from one

Certificate required.

or more of the presidents of the circuit courts, a certificate that he is qualified to execute the duties of the office of clerk of the circuit court: provided, that nothing herein contained shall prevent the circuit courts, in each county, from appointing a clerk

Clerks, *pro tem.*

pro tem., until a qualified clerk may be duly elected: and provided, also, that the said clerks respectively, when qualified and

Term of office,

elected, shall hold their offices seven years, and no longer, unless re-appointed.

Liable to impeachment.

SECT. 9. All clerks shall be removable by impeachment, as in other cases.

Vacancies, how filled.

SECT. 10. When any vacancies happen in any of the courts, occasioned by the death, resignation, or removal from office of any judge of the supreme or circuit courts, or any of the clerks

Appointment to be for residue of term.

of the said courts, a successor shall be appointed in the same manner as herein before prescribed, who shall hold his office for the period which his predecessor had to serve, and no longer, unless re-appointed.

Style of process.

SECT. 11. The style of the process shall be, "The State of

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Indiana." All prosecutions shall be carried on in the name, and by the authority, of the state of Indiana; and all indictments shall conclude, against the peace and dignity of the same.

Justices of the peace, how elected, term of office, &c.

SECT. 12. A competent number of justices of the peace shall be elected by the qualified electors in each township, in the several counties; and shall continue in office five years, if they shall so long behave well; whose powers and duties shall, from time to time, be regulated and defined by law.

ARTICLE VI.

Elections, who entitled to vote.

SECTION 1. In all elections, not otherwise provided for by this constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who has resided in the state one year immediately preceding such election, shall be entitled to vote in the county where he resides, except such as shall be enlisted in the armies of the United States or their allies.

By ballot.

When may be changed.

SECT. 2. All elections shall be by ballot: provided, that the general assembly may, (if they deem it more expedient) at their session in eighteen hundred and twenty-one, change the mode, so as to vote *viva voce;* after which time it shall remain unalterable.

Electors, when free from arrest.

SECT. 3. Electors shall, in all cases, except treason, felony, or breach of the peace, be free from arrest, in going to, during their attendance at, and in returning home from elections.

Persons who may be excluded from voting and from office.

SECT. 4. The general assembly shall have full power to exclude from electing, or being elected, any person convicted of any infamous crime.

Right of suffrage not affected by temporary absence.

SECT. 5. Nothing in this article shall be so construed as to prevent citizens of the United States, who were actual residents at the time of adopting this constitution, and who, by the existing laws of this territory, are entitled to vote, or persons who have been absent from home on a visit, or necessary business, from the privilege of electors.

ARTICLE VII.

Militia to be armed, &c.

SECTION 1. The militia of the state of Indiana shall consist of all free, able bodied male persons; negroes, mulattoes, and

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Indians excepted, resident in the said state, between the ages of eighteen and forty-five years; except such persons as now are, or hereafter may be, exempted by the laws of the United States, or of this state; and shall be armed, equipped, and trained, as the general assembly may provide by law.

Persons conscientiously scrupulous, when exempt.

SECT. 2. No person or persons conscientiously scrupulous of bearing arms, shall be compelled to do militia duty: provided, such person or persons shall pay an equivalent for such exemption; which equivalent shall be collected annually by a civil officer, and be hereafter fixed by law, and shall be equal, as near as may be, to the lowest fines assessed on those privates in the militia, who may neglect or refuse to perform militia duty.

Captains and subalterns, how elected

Non-commissioned officers.

SECT. 3. Captains and subalterns shall be elected by those persons, in their respective company districts, who are subject to perform militia duty; and the captain of each company shall appoint the non-commissioned officers to said company.

Majors and colonels, how elected.

SECT. 4. Majors shall be elected by those persons, within the bounds of their respective battalion districts, subject to perform militia duty; and colonels shall be elected by those persons, within the bounds of their respective regimental districts, subject to perform militia duty.

Generals, how elected.

SECT. 5. Brigadier generals shall be elected by the commissioned officers within the bounds of their respective brigades; and major generals shall be elected by the commissioned officers within the bounds of their respective divisions.

Light companies, how formed.

SECT. 6. Troops and squadrons of cavalry, and companies of artillery, riflemen, grenadiers, or light infantry, may be formed in the said state, in such manner as shall be prescribed by law: provided, however, that every troop or squadron of cavalry, company of artillery, riflemen, grenadiers, or light infantry, which may hereafter be formed within the said state, shall elect their own officers.

Staff of governor.

SECT. 7. The governor shall appoint the adjutant general and quarter-master generals, as, also, his aids-de-camp.

Staff of general officers, &c.

SECT. 8. Major generals shall appoint their aids-de-camp, and all other division staff officers: brigadier generals shall appoint their brigade majors, and all other brigade staff officers; and colonels shall appoint their regimental staff officers.

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SECT. 9. All militia officers shall be commissioned by the governor, and shall hold their commissions during good behavior, or until they shall arrive at the age of sixty years. Militia officers, how commissioned.

SECT. 10. The general assembly shall, by law, fix the method of dividing the militia of the said state into divisions, brigades, regiments, battalions, and companies, and shall also fix the rank of all staff officers. Further organization to be prescribed by law.

ARTICLE VIII.

SECTION 1. Every twelfth year after this constitution shall have taken effect, at the general election held for governor, there shall be a poll opened, in which the qualified electors of the state, shall express, by vote, whether they are in favor of calling a convention or not; and if there should be a majority of all the votes given at such election, in favor of a convention, the governor shall inform the next general assembly thereof, whose duty it shall be, to provide by law for the election of the members to the convention, the number thereof, and the time and place of their meeting; which law shall not be passed, unless agreed to by a majority of all the members elected to both branches of the general assembly; and which convention, when met, shall have it in their power to revise, amend, or change the constitution. But as the holding any part of the human creation in slavery, or involuntary servitude, can only originate in usurpation and tyranny, no alteration of this constitution shall ever take place so as to introduce slavery or involuntary servitude in this state, otherwise than for the punishment of crimes whereof the party shall have been duly convicted. Amendments, how made. Never to introduce slavery.

ARTICLE IX.

SECTION 1. Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government, and spreading the opportunities and advantages of education through the various parts of the country being highly conducive to this end, it shall be the duty of the general assembly, to provide by law for the improvement of such lands as are, or hereafter may be, granted by the United States to this state, for the use of schools, and to apply any funds which may be raised from such lands, or from any other quarter, to the accomplishment of the grand object for which they are or may be Duty of general assembly as to education.

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School and seminary land not to be sold prior to 1820.

intended: But no lands granted for the use of schools or seminaries of learning shall be sold, by authority of this state, prior to the year eighteen hundred and twenty; and the moneys which may be raised out of the sale of any such lands, or otherwise obtained for the purposes aforesaid, shall be and remain a fund for the exclusive purpose of promoting the interest of literature and the sciences, and for the support of seminaries and public schools. The general assembly shall, from time to time, pass such laws as shall be calculated to encourage intellectual, scientifical, and agricultural improvements, by allowing rewards and immunities for the promotion and improvement of arts, sciences, commerce, manufactures, and natural history; and to countenance and encourage the principles of humanity, honesty, industry, and morality.

To pass laws for encouragement of arts, sciences, &c.

Regular system of education.

SECT. 2. It shall be the duty of the general assembly, as soon as circumstances will permit, to provide by law for a general system of education, ascending in a regular gradation from township schools to a state university, wherein tuition shall be gratis, and equally open to all.

Money paid for exemption from military duty, and fines applied to co. seminaries.—*Mitchell et al.* v. *State*, &c. 3 *Blackf.* 391.

SECT. 3. And for the promotion of such salutary end, the money which shall be paid as an equivalent by persons exempt from militia duty, except in times of war, shall be exclusively, and in equal proportion, applied to the support of county seminaries; also, all fines assessed for any breach of the penal laws, shall be applied to said seminaries, in the counties wherein they shall be assessed.

Penal code to be founded on principles of reformation.

SECT. 4. It shall be the duty of the general assembly, as soon as circumstances will permit, to form a penal code, founded on the principles of reformation, and not of vindictive justice: And, also, to provide one or more farms, to be an asylum for those persons who, by reason of age, infirmity, or other misfortunes, may have a claim upon the aid and beneficence of society, on such principles that such persons may therein find employment and every reasonable comfort, and lose, by their usefulness, the degrading sense of dependence.

Ten per cent. on sale of town lots in new counties reserved for county library.

SECT. 5. The general assembly, at the time they lay off a new county, shall cause at least ten per cent. to be reserved out of the proceeds of the sale of town lots, in the seat of justice of such county, for the use of a public library for such county; and, at the same session, they shall incorporate a library com-

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pany, under such rules and regulations as will best secure its permanence, and extend its benefits.

ARTICLE X.

Banks.

SECTION 1. There shall not be established or incorporated, in this state, any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer: provided, that nothing herein contained shall be so construed as to prevent the general assembly from establishing a state bank and branches, not exceeding one branch for any three counties, and be established at such place within such counties, as the directors of the state bank may select: provided, there be subscribed and paid, in specie, on the part of individuals, a sum equal to thirty thousand dollars: provided, also, that the bank at Vincennes, and the farmers and mechanics bank of Indiana, at Madison, shall be considered as incorporated banks, according to the true tenor of the charters granted to said banks, by the legislature of the Indiana territory: provided, that nothing herein contained shall be so construed as to prevent the general assembly from adopting either of the aforesaid banks as the state bank; and in case either of them shall be adopted as the state bank, the other may become a branch, under the rules and regulations hereinbefore prescribed.

ARTICLE XI.

Oath of office, who to take.

SECTION 1. Every person who shall be chosen or appointed to any office of trust or profit, under the authority of this state, shall, before entering on the duties of said office, take an oath or affirmation, before any person lawfully authorized to administer oaths, to support the constitution of the United States, and the constitution of this state, and also an oath of office.

Treason defined.

SECT. 2. Treason against this state shall consist only in levying war against it, in adhering to its enemies, or giving them aid and comfort.

How proved.

SECT. 3. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

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Oaths, how administered.

SECT. 4. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God.

Bribery at elections shall disqualify.

SECT. 5. Every person shall be disqualified from serving as governor, lieutenant governor, senator, or representative, for the term for which he shall have been elected, who shall have been convicted of having given or offered any bribe, treat, or reward, to procure his election.

Residence of state, district, county, and town officers.

SECT. 6. All officers shall reside within the state; and all district, county, or town officers, within their respective districts, counties, or towns, (the trustees of the town of Clarksville excepted) and shall keep their respective offices at such places therein as may be directed by law; and all militia officers shall reside within the bounds of the division, brigade, regiment, battalion, or company, to which they may severally belong.

Neither slavery nor involuntary servitude. *State* v. *Lasselle*, 1 Blackf. 60. Case of *Mary Clarke*, ib. 122. Indenture of negro, &c. made out of state, void.

SECT. 7. There shall be neither slavery, nor involuntary servitude in this state, otherwise than for the punishment of crimes whereof the party shall have been duly convicted. Nor shall any indenture of any negro or mulatto, hereafter made and executed out of the bounds of this state, be of any validity within the state.

Laws, when in force. *Treadway* v. *Gapin*. 1 Blackf. 299.

SECT. 8. No act of the general assembly shall be in force, until it shall have been published in print, unless in cases of emergency.

Commissions, how to issue.

SECT. 9. All commissions shall be in the name, and by the authority, of the state of Indiana, and sealed with the state seal, and signed by the governor, and attested by the secretary of state.

Recorder. *Hedley* v. *Board of Commissioners of Franklin county*. 4 Blackf. 116. Clerks may be elected recorders.

SECT. 10. There shall be elected in each county, a recorder, who shall hold his office during the term of seven years, if he shall so long behave well: provided, that nothing herein contained shall prevent the clerks of the circuit courts from holding the office of recorder.

Corydon, seat of government.

SECT. 11. Corydon, in Harrison county, shall be the seat of government of the state of Indiana, until the year eighteen hundred and twenty-five, and until removed by law.

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Old counties not to be reduced below 400 square miles.

SECT. 12. The general assembly, when they lay off any new county, shall not reduce the old county or counties, from which the same shall be taken, to a less content than four hundred square miles.

No person to hold more than one lucrative office.

SECT. 13. No person shall hold more than one lucrative office at the same time, except as in this constitution is expressly permitted.

Residence necessary to election as county officer.

SECT. 14. No person shall be appointed as a county officer, within any county, who shall not have been a citizen and an inhabitant therein, one year next preceding his appointment, if the county shall have been so long erected; but if the county shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

Town and township officers, how appointed.

SECT. 15. All town and township officers shall be appointed in such manner as shall be directed by law.

Salaries.

SECT. 16. The following officers of government shall not be allowed greater annual salaries, until the year eighteen hundred and nineteen, than as follows:—The governor, one thousand dollars; the secretary of state, four hundred dollars; the auditor of public accounts, four hundred dollars; the treasurer, four hundred dollars; the judges of the supreme court, eight hundred dollars each; the presidents of the circuit courts, eight hundred dollars each; and the members of the general assembly, not exceeding two dollars per day each, during their attendance on the same; and two dollars for every twenty-five miles they shall severally travel, on the most usual route in going to, and returning from, the general assembly; after which time, their pay shall be regulated by law. But no law, passed to increase the pay of members of the general assembly, shall take effect, until after the close of the session, at which such law shall have been passed.

Increase of members' pay.

Boundaries of state declared.

SECT. 17. In order that the boundaries of the state of Indiana may more certainly be known and established, it is hereby ordained and declared, that the following shall be, and forever remain, the boundaries of the said state, to-wit: Bounded on the east, by the meridian line which forms the western boundary of the state of Ohio; on the south, by the Ohio river, from the mouth of the great Miami river to the mouth of the river Wabash; on the west, by a line drawn along the middle

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of the Wabash river, from its mouth to a point where a due north line, drawn from the town of Vincennes, would last touch the northwestern shore of the said Wabash river; and from thence, by a due north line until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north, by the said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the state of Ohio.

ARTICLE XII.

All rights, suits, &c. continue as if no change had taken place.

SECTION 1. That no evils or inconveniences may arise from the change of a territoral government to a permanent state government, it is declared by this constitution, that all rights, suits, actions, prosecutions, recognizances, contracts, and claims, both as it respects individuals and bodies corporate, shall continue as if no change had taken [place] in this government.

Fines and forfeitures, how to inure.

SECT. 2. All fines, penalties, and forfeitures, due and owing to the territory of Indiana, or any county therein, shall inure to the use of the state or county. All bonds executed to the governor, or any other officer, in his official capacity, in the territory, shall pass over to the governor, or other officers of the state or county, and their successors in office, for the use of the state or county, or by him or them to be respectively assigned over to the use of those concerned, as the case may be.

Territorial officers to continue until superseded.

SECT. 3. The governor, secretary, and judges, and all other officers, both civil and military, under the territorial government, shall continue in the exercise of the duties of their respective departments, until the said officers are superseded under the authority of this constitution.

Territorial laws not inconsistent, &c. to remain in force.

SECT. 4. All laws and parts of laws now in force in this territory, not inconsistent with this constitution, shall continue and remain in full force and effect, until they expire or be repealed.

Governor to use private seal, &c.

SECT. 5. The governor shall use his private seal, until a state seal be procured.

Executive officers to reside at seat of government.

SECT. 6. The governor, secretary of state, auditor of public accounts, and treasurer, shall severally reside, and keep all the public records, books, and papers, in any manner relating to

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their respective offices, at the seat of government: provided, notwithstanding, that nothing herein contained shall be so construed as to affect the residence of the governor for the space of six months, and until buildings suitable for his accommodation shall be procured at the expense of the state.

Suits, &c. pending to proceed as if this constitution had not been adopted.

SECT. 7. All suits, pleas, plaints, and other proceedings, now depending in any court of record, or justices' courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, injunction, or other proceedings whatsoever, shall progress, and be carried on, in the respective court or courts, in the same manner as is now provided by law, and all proceedings had therein, in as full and complete a manner as if this constitution were not adopted. And appeals and writs of error may be taken from the circuit court and general court, now established in the Indiana territory, to the supreme court, in such manner as shall be provided for by law.

President of convention to issue writs of election.

SECT. 8. The president of this convention shall issue writs of election, directed to the several sheriffs of the several counties, requiring them to cause an election to be held for a governor, lieutenant governor, a representative to the congress of the United States, members of the general assembly, sheriffs, and coroners, at the respective election districts in each county, on the first Monday in August next; which election shall be conducted in the [manner] prescribed by the existing election laws of the Indiana territory; and the said governor, lieutenant governor, members of the general assembly, sheriffs, and coroners, then duly elected, shall continue to exercise the duties of their respective offices for the time prescribed by this constitution, and until their successor or successors are qualified, and no longer.

When to be held, and how conducted.

First apportionment.

SECT. 9. Until the first enumeration shall be made, as directed by this constitution, the county of Wayne shall be entitled to one senator and three representatives; the county of Franklin, one senator and three representatives; the county of Dearborn, one senator and two representatives; the county of Switzerland, one representative; and the counties of Jefferson and Switzerland, one senator, and the county of Jefferson, two representatives; the county of Clark, one senator and three representatives; the county of Harrison, one senator and three representatives; the counties of Washington, Orange, and

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Jackson, one senator; and the county of Washington, two representatives; the counties of Orange and Jackson, one representative each; the county of Knox, one senator and three representatives; the county of Gibson, one senator and two representatives; the counties of Posey, Warrick, and Perry, one senator, and each of the aforesaid counties of Posey, Warrick, and Perry, one representative.

Territorial records, how to be disposed of.

SECT. 10. All books, records, documents, warrants, and papers, appertaining and belonging to the office of the territorial treasurer of the Indiana territory, and all moneys therein, and all papers and documents in the office of the secretary of said territory, shall be disposed of as the general assembly of this state may direct.

Suits, records, &c. in territorial courts transferred to state courts.

SECT. 11. All suits, actions, pleas, plaints, prosecutions, and causes whatsoever, and all records, books, papers, and documents, now in the general court, may be transferred to the supreme court established by this constitution; and all causes, suits, actions, pleas, plaints, and prosecutions whatsoever, now existing or pending in the circuit courts of this territory, or which may be therein at the change of government, and all records, books, papers, and documents, relating to the said suits, or filed in the said courts, may be transferred over to the circuit courts established by this constitution, under such rules and regulations as the general assembly may direct.

Done in convention at Corydon, on the twenty-ninth day of June, in the year of our Lord, eighteen hundred and sixteen, and of the Independence of the United States, the fortieth.

In witness whereof, we have hereunto subscribed our names.

JONATHAN JENNINGS,
President of the convention, and delegate from the county of Clark.

Attest:

WILLIAM HENDRICKS, *Secretary.*

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STATE OF INDIANA.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND FORTY THREE.

AN ACT

FOR REVISING AND CONSOLIDATING THE STATUTES OF THE STATE OF INDIANA.

WHEREAS, it is expedient and proper that the various statutes of this state, relating to its boundaries, jurisdiction, divisions, civil government, and internal administration, should be revised, amended, and arranged into appropriate chapters and articles, and that omissions should be supplied:

THEREFORE,

BE it enacted by the general assembly of the state of Indiana as follows:

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PART I.

AN ACT CONCERNING THE BOUNDARIES, JURISDICTION, DIVISIONS, CIVIL GOVERNMENT, AND INTERNAL ADMINISTRATION OF THE STATE OF INDIANA.

CHAPTER I.

OF THE BOUNDARIES OF THE STATE, ITS TERRITORIAL JURISDICTION, AND SOVEREIGNTY.

State boundaries.

Const. Ohio, Art. 7, S. 6. Act Congress, see page 33.

SECTION 1. The boundaries of the state of Indiana are declared to be established as follows: Bounded on the east by the meridian line which forms the western boundary of the state of Ohio, — the same being the line drawn due north from the mouth of the Great Miami river; on the south by the river Ohio, from the mouth of the Great Miami river, to the mouth of the river Wabash; on the west by a line drawn along the middle of the Wabash river, from its mouth to a point where a due north line, drawn from the town of Vincennes, would last touch the northwestern shore of said Wabash river, and from thence by a due north line, until the same shall intersect an east and west line, drawn through a point, ten miles north of the southern extreme of Lake Michigan; on the north by said east and west line, until the same shall intersect the first meridian line, which forms the western boundary of the state of Ohio.

Jurisdiction and sovereignty. Act of Virginia, page 19.

SECT. 2. The state of Indiana possesses jurisdiction and sovereignty, co-extensive with the boundaries as declared in the preceding section and has concurrent jurisdiction in civil and criminal cases, with the state of Kentucky on the Ohio river, and with the state of Illinois on the river Wabash, so far as said rivers form the common boundary between this state and the said states respectively.

Restrained in places ceded to United States.

SECT. 3. The jurisdiction of this state over places that have been heretofore, or may hereafter be, ceded to the general government, shall be restrained and qualified by the terms of such cession.

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CHAPTER II.

OF THE DIVISION OF THE STATE INTO COUNTIES AND TOWNSHIPS

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ARTICLE I.

Of the Counties.

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SECTION 1. The state of Indiana shall be, and the same is hereby divided into the following counties, to-wit: Allen, Adams, Bartholomew, Benton, Boone, Brown, Blackford, Clark, Clay, Crawford, Carroll, Cass, Clinton, Dearborn, Decatur, Daviess, Dubois, Delaware, DeKalb, Elkhart, Fayette, Floyd, Franklin, Fountain, Fulton, Gibson, Greene, Grant, Hamilton, Harrison, Hendricks, Henry, Hancock, Huntington, Jackson, Jefferson, Jasper, Jennings, Johnson, Jay, Knox, Kosciusko, Lake, Lawrence, Lagrange, Laporte, Madison, Marion, Martin, Monroe, Montgomery, Morgan, Miami, Marshall, Noble, Orange, Owen, Parke, Pike, Perry, Posey, Putnam, Porter, Pulaski, Randolph, Ripley, Rush, Scott, Shelby, Spencer, Starke, Steuben, Switzerland, St. Joseph, Sullivan, Tippecanoe, Union, Vanderburgh, Vermillion, Vigo, Wayne, Warrick, Washington, Warren, White, Whitley, Wells, and Wabash, and shall be bounded as described in the following sections.

Dearborn. SECT. 2. The district of country within the following boundaries shall form and constitute the county of Dearborn, to-wit: Beginning on the Ohio river at a point where the south line of fractional section twenty-one, in township three north, range one west, thence west to the old Indian boundary, thence northwardly with the same to a point where the line dividing townships seven and eight north intersects the same, thence east to the state line, thence south to the Ohio river, thence down the same with the meanders thereof to the place of beginning.

Switzerland. SECT. 3. The district of country within the following boundaries shall form and constitute the county of Switzerland, to-wit: Beginning at a point on the Ohio river between fractional sections twenty-two and twenty-seven, in township three north, range one west, thence west to the old Indian boundary line, thence north with said line to the line dividing sections twenty-five and thirty-six, in township six north, of range twelve east, thence west to the northwest corner of section thirty-three, in township six north, range twelve east, thence south to the Ohio river, thence up said river, with the meanders thereof, to the place of beginning.

Franklin. SECT. 4. The district of country within the following boundaries shall form and constitute the county of Franklin, to-wit: Beginning at the northeast corner of township seven on the line of the state of Ohio, thence west to the northern boundary of the Grouseland purchase, thence southwestwardly with said boundary to the middle of range eleven, thence north to the line dividing townships twelve and thirteen, thence east with said line to the southeast corner of section thirty-three, in

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township thirteen, range thirteen, thence east to the state line, thence south with the same to the place of beginning.

Union. SECT. 5. The district of country within the following boundaries shall form and constitute the county of Union, to-wit: Beginning at the southeast corner of section thirteen, in township ten, range one west, thence west to the southwest corner of section thirty-six, in township thirteen, range thirteen east, thence north to the northwest corner of section twenty-five, township fifteen north, range thirteen east, thence east to the state line, thence south to the beginning.

Fayette. SECT. 6. The district of country within the following bounds shall form and constitute the county of Fayette, to-wit: Beginning at the southeast corner of section thirty-three, in township thirteen, range eleven, thence east with the line of Franklin county to the southeast corner of section thirty-five, township thirteen, range thirteen east, thence north with the Union county line to the northwest corner of section thirty-six, in township fifteen, range thirteen, thence west to the southwest corner of section twenty-seven, in township fifteen, range twelve east, thence north to the line dividing townships fifteen and sixteen, thence west to the northwest corner of section three, township fifteen, range eleven, thence south to the beginning.

Ripley. SECT. 7. The district of country within the following bounds shall form and constitute the county of Ripley, to-wit: Beginning at the southeast corner of section thirty-one, in township six north, of range ten east, thence north to the Indian boundary line, thence northeastwardly with said boundary line to the line dividing sections seventeen and twenty, township ten, range twelve east, thence east to the Indian boundary line, thence southwardly with said line to a point thereon one mile north of the line dividing townships five and six, thence west to the northwest corner of section thirty-three, in township six, range twelve east, thence south to the line dividing townships five and six, thence west to the place of beginning.

Jefferson. SECT. 8. The territory included within the following boundaries shall form and constitute the county of Jefferson, to-wit: Beginning on the Ohio river at a point where an east and west line dividing fractional section number twenty-nine, township two south, range ten east, strikes the same, thence west through the centre of said fractional section twenty-nine and sections thirty and twenty-five, to the east line of section twenty-six, township two, range nine, thence north to the southeast corner of section twenty-three, thence west to the southeast corner of section twenty-two, thence north to the northeast corner of section twenty-two, thence west to the southeast corner of section thirteen, township two north, of range eight east, thence north to the southeast corner of township three, range eight, thence north to the line dividing sections twenty-four and twenty-five, thence west to the northeast corner of section twenty-seven, thence north to the northeast corner of section fifteen, thence

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west to the northeast corner of section seventeen, thence north to the northeast corner of section eight, thence west to the northeast corner of section seven, thence north to the township line, thence west to the northwest corner of said township, thence north with the line, dividing ranges seven and eight, to the line dividing townships four and five, thence east to the northeast corner of section three, township four, range eight east; reserving, however, all that part of the town of Paris, being the northeast quarter of section four, in township four north, range eight east, which is attached to the county of Jennings, thence north to the northwest corner of section twenty-six, in township five, range eight, thence east to the range line dividing ranges eight and nine, thence north to the northeast corner of section thirteen, township five north, range eight east, thence east to the southeast corner of section eight, township five, rage nine, thence north to the line dividing townships five and six, thence east to the northeast corner of section five, township five north, range twelve east, thence south to the Ohio river, thence with said river to the place of beginning.

Decatur. SECT. 9. The district of country within the following boundaries shall form and constitute the county of Decatur, to-wit: Beginning at the southwest corner of section eighteen, in township number eight north, of range eight east, thence north to the northwest corner of section six, in township ten north, of range eight, thence east to the southeast corner of section thirty-three, in township eleven, range eight east, thence north to the northwest corner of section thirty-four, in township twelve north, of range eight east, thence east to the northeast corner of section thirty-three, township twelve, range eleven east, thence south to the north line of the Grouseland purchase, thence southwestwardly with the said line to the line between sections eighteen and nineteen, township eight north, range nine east, thence west to the place of beginning.

Jennings. SECT. 10. The district of country within the following boundaries shall form and constitute the county of Jennings, to-wit: beginning at the northwest corner of section nineteen, township eight north, range seven east, thence south with said range line, dividing ranges six and seven, to the south fork of the Muscatituck river, thence easterly with the Muscatituck river to the line dividing ranges seven and eight east, thence north to the line dividing townships four and five, thence east to the northeast corner of the northwest quarter of section four, township four north, range eight east, thence south one half mile, thence east one half mile, thence north one half mile, thence east to the southeast corner of section thirty-four, township five, north of range eight east, thence north to the northwest corner of section twenty-six, in said township, thence east to the line dividing ranges eight and nine, thence north to the northwest corner of section eighteen, township five north, of range nine east, thence east to the southeast corner of section eight, in said township, thence north to the line dividing townships five and

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six, thence east to the southeast corner of section thirty-one, township six north, of range ten east, thence north to the north boundary of the Grouseland purchase, thence southwesterly with said boundary to the line dividing sections eighteen and nineteen, township eight north, range nine east, thence west to the place of beginning.

Shelby. SECT. 11. The district of country within the following boundaries shall form and constitute the county of Shelby, to-wit: Beginning at the south east corner of section thirty-three, in township eleven north, of range eight east, thence north to the northeast corner of section four, in township fourteen north, of range eight east, thence west to the northwest corner of section two, in township fourteen north, of range five east, thence south to the line dividing townships ten and eleven, thence east to the place of beginning.

Rush. SECT. 12. The district of country within the following boundaries shall form and constitute the county of Rush, to-wit: Beginning at the southwest corner of section twenty-seven, in township twelve north, of range eight east, thence east to the south-east corner of section twenty-eight, township twelve north, range eleven east, thence north to the line dividing townships fifteen and sixteen, thence west to the northwest corner of section three, in township fifteen north, range eight, thence south to the place of beginning.

Henry. SECT. 13. The district of country within the following boundaries shall form and constitute the county of Henry, to-wit: Beginning at the southwest corner of section thirty-two, township sixteen north, of range twelve east, thence north to the township line dividing townships sixteen and seventeen, thence east to the southeast corner of section thirty-two, township seventeen north, range twelve east, thence north to the northeast corner of section twenty, township eighteen north, range twelve, thence west to the range line dividing ranges eleven and twelve, thence north on said range line to the north east corner of section twenty-five, township nineteen north, range eleven, thence west to the northeast corner of section twenty-six, in township nineteen north, range eight east, thence south with the section line to the southwest corner of section thirty-six, in township sixteen north, range eight, thence east to the place of beginning.

Wayne. SECT. 14. The district of country within the following boundaries shall form and constitute the county of Wayne, to-wit: Beginning at the southwest corner of section thirty-two, township sixteen north, range twelve east, thence north to the township line dividing townships sixteen and seventeen east, to the southeast corner of section thirty-two, township seventeen, range twelve, thence north to the northeast corner of section twenty, township eighteen north, of range twelve east, thence east to the state line, thence south with said line to the north-east corner of section twelve, township twelve north, of range one west, thence west to the northwest corner of section

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twenty-five, township fifteen north, range thirteen east, thence south to the northwest corner of section thirty-six, in said township and range, thence west to the southwest corner of section twenty-seven, township fifteen north, of range twelve east, thence north to the line dividing townships fifteen and sixteen, thence west to the place of beginning.

Randolph. SECT. 15. The district of country within the following boundaries shall form and constitute the county of Randolph, to-wit: Beginning at the Ohio state line at the northeast corner of township fifteen, range one west, thence west to the line dividing ranges eleven and twelve east, thence north to the line dividing townships twenty-one and twenty-two, thence east to the state line, thence south with said state line to the place of beginning.

Delaware. SECT. 16. The district of country within the following boundaries shall form and constitute the county of Delaware, to-wit: Beginning at the northeast corner of section twenty-five, township nineteen, range eleven east, thence north to the northeast corner of section twelve, township twenty-two north, range number eleven, thence west to the northeast corner of section eleven, township twenty-two north, of range eight east, thence south to the southwest corner of section twenty-four, township nineteen, range eight east, thence east to the place of beginning.

Madison. SECT. 17. The district of country within the following boundaries shall form and constitute the county of Madison, to-wit: Beginning at the southeast corner of section two, township seventeen north, range eight east, thence north with said section line to the northeast corner of section eleven, township twenty-two, range eight east, thence west to a line drawn from the west to a point which will intersect a line running north from the northeast corner of Hamilton county, thence south to the southwest corner of section four, township seventeen, range six east, thence east to the place of beginning.

Hancock. SECT. 18. The district of country within the following boundaries shall form and constitute the county of Hancock, to-wit: Beginning at the southwest corner of section thirty-five, in township fifteen north, range five east, thence east to the southeast corner of section thirty-three, township fifteen north, range eight east, thence north to the northeast corner of section four, in said range and township, thence east to the southwest corner of section thirty-six, township sixteen, range eight, thence north to the northwest corner of section one, in township sixteen north, range eight east, thence east to the southwest corner of section thirty-six, township seventeen north, range eight east, thence north to the northwest corner of section twelve in said township, thence west to the northwest corner of section nine, in township seventeen, range six east, thence south to the southwest corner of said section, thence west to the northwest corner of section fourteen, township seventeen, range five, thence south to the place of beginning.

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SECT. 19. The district of country within the following boundaries shall form and constitute the county of Marion, to-wit: Beginning at the northeast corner of section fifteen, in township seventeen north, of range five east, thence south on the section line to the southeast corner of section twenty-two, in township fourteen north, of range five east, thence west to the southwest corner of section twenty-one, in township fourteen north, of range two east, thence north to the northwest corner of section four, township sixteen north, of range two east, thence north through the centre of sections thirty-two, twenty-nine, twenty, and seventeen, to the northwest corner of the northeast quarter of section seventeen, township seventeen, range two east, thence east to the place of beginning. Marion.

SECT. 20. The district of country within the following boundaries shall form and constitute the county of Hamilton, to-wit: Beginning at the southwest corner of section seven, township seventeen, range three east, thence north on the range line to the township line dividing townships twenty and twenty-one, thence east to the northeast corner of section five, township twenty, range six east, thence south to the southeast corner of section eight, township seventeen, range six east, thence west to the place of beginning. Hamilton.

SECT. 21. The district of country within the following boundaries shall form and constitute the county of Johnson, to-wit: Beginning at the southeast corner of section thirty-four, township eleven north, range five east, thence north to the northeast corner of section twenty-seven, township fourteen, range five, thence west to the northwest corner of section thirty, township fourteen, range three, thence south to the southwest corner of section thirty-one, township eleven north, range three east, thence east to the place of beginning. Johnson.

SECT. 22. The district of country within the following boundaries shall form and constitute the county of Bartholomew, to-wit: Beginning at the northeast corner of section one, township ten north, range seven east, thence south to the southeast corner of section thirteen, in township eight north, range seven east, thence west to the southwest corner of section eighteen, township eight north, range seven east, thence south with the range line to where the same crosses Big Sand creek, thence down the same, with the meanders of said creek, to its junction with the driftwood fork of White river, thence south with the meanders of said river to the southeast corner of section sixteen, in township seven north, of range six east, thence west to the southwest corner of section fifteen, in township seven north, range four east, thence north to the northwest corner of section three, in township ten north, of range four east, thence east to the place of beginning. Bartholomew.

SECT. 23. The district of country within the following boundaries shall form and constitute the county of Morgan, to-wit: Beginning on the township line dividing townships ten and eleven north, where the line dividing ranges two and three Morgan.

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east, crosses the same, thence west to the centre of range two west, thence north to the southeast corner of section sixteen, township twelve north, of range two west, thence west to the line dividing ranges two and three west, thence north to the southwest corner of section nineteen, in township fourteen north, of range two west, thence east to the line dividing ranges two and three east, thence south to the place of beginning.

Monroe. SECT. 24. The district of country within the following boundaries shall form and constitute the county of Monroe, to-wit: Beginning at the line dividing townships six and seven north, at the southeast corner of section thirty-two, in township seven north, of range two east, thence north to the northeast corner of section seventeen, in said township and range, thence west to the southeast corner of section eleven, in township seven north, of range one east, thence north to the northeast corner of section two, in township ten north, of range one east, thence west to the southeast corner of section thirty-three, in township eleven north, of range two west, thence north to White river, thence down said river to the line dividing ranges two and three west, thence south with said range line to the southwest corner of section thirty-one, in township seven north, of range two west, thence east to the place of beginning.

Brown. SECT. 25. The district of country within the following boundaries shall form and constitute the county of Brown, to-wit: Beginning at the northwest corner of section one, in township ten north, of range one east, thence south to the southwest corner of section twelve, in township seven north, of range one east, thence east to the southeast corner of section nine, in township seven north, of range four east, thence north to the northeast corner of section four, in township ten north, of range four east, thence west to the place of beginning.

Jackson. SECT. 26. The district of country within the following boundaries shall form and constitute the county of Jackson, to-wit: Beginning at Big Sand creek where the line dividing ranges six and seven east crosses the same, thence down said creek, with the meanders thereof, to its junction with the drift wood fork of White river, thence down the same to where an east and west line, running through the centre of township seven north, strikes the northwest side of the aforesaid river, thence west to where it crosses the line dividing sections fifteen and sixteen, in range four, thence north with said line to the northeast corner of section sixteen, township seven, range four, thence west to the northwest corner of section sixteen, township seven, range two east, thence south to the northwest corner of section sixteen, in township five north, range two east, thence east to the northeast corner of section fifteen, in the same range and township, thence south to the drift wood fork of White river, thence up said river, with the meanders thereof, to the mouth of the Muscatituck river, thence up the said last mentioned river to the forks thereof, thence up the south fork

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to where the line dividing ranges six and seven, crosses the same, thence north with said range line to the place of beginning.

Lawrence. SECT. 27. The district of country within the following boundaries shall form and constitute the county of Lawrence, to-wit: Beginning at the line dividing ranges two and three west, at the southwest corner of section eighteen, in township three north, of range two west, thence east to the southeast corner of section seventeen township three north, range two east, thence north to the east fork of White river, thence up the same to where the line dividing sections twenty-two and twenty-three, in township four north, of range two east crosses the same, thence north to the northeast corner of section fifteen, in township five north, of range two east, thence west to the northwest corner of section sixteen, in said township and range, thence north to the line dividing townships six and seven, thence west to the line dividing ranges two and three west, thence south to the place of beginning.

Washington. SECT. 28. The district of country within the following boundaries shall form and constitute the county of Washington, to-wit: Beginning at the southwest corner of section sixteen, in township one south, of range two east, thence due east to the southeast corner of section eighteen, township one south, range five, thence north two miles, thence east one half mile, thence north to the north line of section thirty-two, township one, range five east, thence east one half mile, thence north one half mile, thence east one mile and a half, thence north one half mile, thence east one mile, thence north one half mile, thence east to the centre of section nineteen, township one north, range six east, thence north one half mile, thence east one half mile, thence north one half mile, thence east one mile, thence north one half mile, thence east one half mile, thence north one half mile, thence east one half mile, thence north to the line dividing townships one and two north, thence west one mile, thence north one mile, thence west to the southwest corner of section twenty-nine, in township two north, of range six east, thence north to the Muscatituck river, thence down the same and White river to where a sectional line running north from the beginning crosses said White river, thence south with said sectional line to the place of beginning.

Clark. SECT. 29. The district of country within the following boundaries shall form and constitute the county of Clark, to-wit: Beginning on the Ohio river at a point where an east and west line dividing fractional section number twenty-nine, township two south, of range ten east, strikes the same, thence west through the centre of said fractional section twenty-nine, and fractional sections thirty, and twenty-five, to the east line of section twenty-six, township two, range nine, thence north to the southeast corner of section twenty-three, thence west to the southeast corner of section twenty-two, thence north

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to the northeast corner of section twenty-two, thence west to the line dividing ranges six and seven east, thence south to the northeast corner of section twenty-five, township two north, range six east, thence west one half mile, thence south one half mile, thence west one half mile, thence south one half mile, thence west one half mile, thence south one half mile, through the centre of section thirty-five, to the line dividing townships one and two north, thence west one half mile, thence south to the southeast corner of section three, township one north, range six east, thence west one half mile, thence south one half mile, thence west one half mile, thence south one half mile, thence west one mile, thence south one half mile, thence west one mile, thence south one half mile, thence west one half mile, thence south one half mile, thence west to the centre of section twenty-three, township one north, range five east, thence south one half mile, thence west one mile, thence south one half mile, thence west one mile and a half, thence south one half mile, thence west one half mile, thence south to the south line of section five, township one south, range five east, thence west one half mile, thence south to the southwest corner of section twenty-three east, to the southeast corner of section twenty-three, township one south, range six east, thence southeastward to the south corner of lot sixty-six, in Clark's grant, on Silver creek, thence down said creek to the Ohio river, thence up said river to the place of beginning.

Scott.

SECT. 30. The district of country within the following boundaries shall form and constitute the county of Scott, to-wit: Beginning at the southeast corner of section thirteen, township two north, range eight east, thence north to the northeast corner of section twenty-five, township three north, range eight east, thence west two miles, to the northeast corner of section twenty-seven, thence north to the northeast corner of section fifteen, thence west to the northwest corner of section sixteen, thence north to the northeast corner of section eight, thence west to the northwest corner of same, thence north to the line dividing townships three and four north, thence west to the southeast corner of township four north, range seven east, thence north to the south fork of the Muscatituck river, thence down the same with the main channel thereof to the line dividing sections five and six, township three north, range six east, thence south to the southwest corner of section twenty-nine, township two north, range six east, thence east two miles, thence south one mile, to the line dividing townships one and two north, thence east one mile and a half, thence north one mile, thence east a half mile, thence north a half mile, thence east a half mile, thence north a half mile, thence east a half mile to the line dividing ranges six and seven east, thence north to the northwest corner of section nineteen, township two north, range seven east, thence east to the place of beginning.

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SECT. 31. The district of country within the following boundaries shall form and constitute the county of Floyd, to-wit: Beginning on the Ohio river where the line dividing sections six and seven, in township four south, range six east, strikes the same, thence west with said line to the southwest corner of section three, in township four south, range five east, thence north with the line dividing sections three and four, to the northeast corner of section sixteen, in township three south, of range five east, thence west to the southwest corner of section nine, thence north to the southeast corner of section five, thence west to the southwest corner of section five, thence north to the northwest corner of section thirty-two, in township two south, of range five east, thence west to the southwest corner of section thirty, thence north to the southwest corner of section eighteen, thence west to the southwest corner of section thirteen, in township two south, of range four east, thence north to the southwest corner of section thirteen, in township one south, of range four east, thence east to the northeast corner of section nineteen, township one south, of range five east, thence south to the southeast corner of said section, thence east to the west boundary of the Illinois grant, thence southeastwardly with the line dividing lots one hundred and twenty-six and one hundred and twenty-seven, in said grant, to Silver creek, thence down said creek with the meanders thereof, to the mouth thereof, thence down the Ohio river to the place of beginning: provided, and it is expressly understood, that nothing passed at the present session of the general assembly shall alter the county boundary of the county of Floyd; but the same shall be and remain as it was prior to the first day of December, 1842. Floyd.

SECT. 32. The districts of country within the following boundaries shall form and constitute the county of Harrison, to-wit: Beginning on the Ohio river, at the mouth of Big Blue river, thence up the same to the line dividing sections twenty-six and twenty-seven, in township three south, range two east, thence north until it strikes Big Blue river, thence up the same, with the meanders thereof, to the line dividing sections fourteen and twenty-three, in township one south, range two east, thence east to the northeast corner of section twenty-three, township one south, of range four east, thence south to the southeast corner of section thirteen, township two south, of range four east, thence east to the line dividing ranges four and five east, thence south to the southwest corner of section thirty, township two south, of range five east, thence east to the southeast corner of said section, thence south to the southwest corner of section five, township three south, of range five east, thence east to the north east corner of section eight, thence south to the southeast corner of said section, thence east to the northeast corner of section sixteen, thence south to the southeast corner of section four, township four south, of range five east, thence east to the Ohio river, thence down the same to the place of beginning. Harrison.

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Crawford. SECT. 33. The district of country within the following boundaries shall form and constitute the county of Crawford, to-wit: Beginning on the Ohio river at the mouth of Big Blue river, thence up the same, with the meanders thereof, to the line dividing sections twenty-six and twenty-seven, in township three south, of range two east, thence north with said line until it strikes Big Blue river, thence up said river, with the meandars thereof, to the line dividing sections fourteen and twenty-three, township one south, of range two east, thence west to the southwest corner of section sixteen, thence south to the southwest corner of section twenty-eight, in township one south of range two east, thence west to the line dividing ranges two and three west, thence south with said line to the southwest corner of section seven, in township three south, of range two west, thence east to the line dividing ranges one and two west, thence south to the southwest corner of section thirty-one in township three south, of range one west, thence east to the meridian line, thence south to the Ohio river, thence up the same to the place of beginning.

Orange. SECT. 34. The district of country within the following boundaries shall form and constitute the county of Orange, to-wit: Beginning at the southwest corner of section eighteen, in township three north, of range two west, thence south to the southwest corner of section thirty, township one south, of range two west, thence east to the northwest corner of section thirty-three, in township one south, of range two east, thence north to the southwest corner of section sixteen, in township three north, of range two east, thence west to the place of beginning.

Perry. SECT. 35. The district of country within the following boundaries shall form and constitute the county of Perry, to-wit: Beginning on the Ohio river where the meridian line strikes the same, thence north to the line dividing townships three and four south, thence west to the line dividing ranges one and two west, thence north to the northeast corner of section thirteen, in township three south, of range two west, thence west to the line dividing ranges two and three west, thence south to the southeast corner of section thirteen, in township three south, of range three west, thence west to the line dividing ranges three and four west, thence south to Anderson river, thence down the same to the Ohio river, thence up the Ohio river to the place of beginning.

Spencer. SECT. 36. The district of country within the following boundaries shall form and constitute the county of Spencer, to-wit: Beginning on the Ohio river at a line dividing sections twenty-five and twenty-six, township seven south, range eight west, thence north to Little Pigeon creek, thence up the creek, with the meanders thereof, to the line dividing townships four and five south, range six west, thence east to the southeast corner of township four south, range six east, thence north to the northeast corner of said township, thence east to northeast

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corner of township four south, range four west, thence south to Andersons river, thence down said river, with the meanders thereof, to the Ohio river, thence down the Ohio river to the place of beginning.

Warrick. SECT. 37. The district of country within the following boundaries shall form and constitute the county of Warrick, to-wit: Beginning on the Ohio river where the sectional line running north and south one mile west of the line dividing ranges six and seven west strikes the same, thence north to Little Pigeon creek, thence up said creek, with the meanders thereof, to the Poke Patch Fork, thence up the last mentioned stream, with the meanders thereof, to the line dividing townships four and five south, thence east to the line dividing ranges five and six west, thence north to the northeast corner of township four south, range six west, thence west to the southwest corner of section thirty-four, in township three south, of range six west, thence north to the northeast corner of section twenty-eight, township three south, range six west, thence west to the southeast corner of section twenty-one, in township three south, of range eight west, thence north to the northeast corner of the same section, thence west to the northwest corner of the same, thence south to the southwest corner of section sixteen, in township four south, of range eight, thence west to the northwest corner of section nineteen, township four south, range nine west, thence south to the line dividing townships five and six south, thence east to the northeast corner of section six, township six south, of range nine west, thence south to the Ohio river, thence up the same to the place of beginning.

Dubois. SECT. 38. The district of country within the following boundaries shall form and constitute the county of Dubois, to-wit: Beginning at a point on the east fork of White river, where the line dividing sections fifteen and sixteen, in township one north, of range six west, crosses the same, thence south to the line dividing townships three and four south, thence east to the line dividing ranges three and four west, thence north to the southwest corner of section eighteen, in township three south, of range three west, thence east to the line dividing ranges two and three west, thence north to the northeast corner of section thirteen, township one north, range three west, thence west to the east fork of White river, thence down said river to the place of beginning.

Pike. SECT. 39. The district of country within the following boundaries shall form and constitute the county of Pike, to-wit: Beginning on White river where the range line dividing ranges nine and ten west crosses the same, thence south with said range line to where the line dividing township one north, and one south, crosses the same, thence east to the northeast corner of section six, in township one south, of range nine west, thence south to the southeast corner of section seven, in the same range and township, thence east to the northeast corner of section sixteen, in said township and range, thence south till it

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strikes the Patoka river, thence east with said river to the line dividing sections four and five, in township two south, of range eight west, thence south to the southwest corner of section sixteen, in township three south, of range eight west, thence east to the southeast corner of said section, thence south to the southeast corner of section twenty-one, in the same township and range, thence east to the southeast corner of section twenty-one, township three south, range six west, thence north to White river, thence down the same, with the meanders thereof, to the place of beginning.

Vanderburgh. SECT. 40. The district of country within the following boundaries shall form and constitute the county of Vanderburgh, to-wit: Beginning on the Ohio river where the range line dividing ranges eleven and twelve west strikes the same, thence north with said range line to the southwest corner of section eighteen, in township four south, of range eleven west, thence east to the line dividing ranges nine and ten, thence south to the line dividing townships five and six south, thence east to the northeast corner of section six, township six south, of range nine west, thence south to the Ohio river, thence down the same to the place of beginning.

Posey. SECT. 41. The district of country within the following boundaries shall form and constitute the county of Posey, to-wit: Beginning on the Ohio river where the line between ranges eleven and twelve west strikes the same, thence north to the line dividing townships three and four south, thence west to the line dividing ranges twelve and thirteen west, thence north to the northeast corner of section thirty-six, in township three south, of range thirteen west, thence west to the Wabash river, thence down the same, with the meanders thereof, to its junction with the Ohio river, thence up the Ohio river, with the meanders thereof, to the place of beginning.

Gibson. SECT. 42. The district of country within the following boundaries shall form and constitute the county of Gibson, to-wit: Beginning on White river where the line dividing ranges nine and ten crosses the same, thence down the said river to its junction with the Wabash river, thence down the same to where the line dividing sections twenty-eight and thirty-three, township three south, range fourteen west, strikes the same, thence east to the line dividing ranges twelve and thirteen west, thence south to the line dividing townships three and four south, range twelve west, thence east to the line dividing ranges eleven and twelve west, thence south to the southwest corner of section eighteen, in township four south, range eleven west, thence east to the southeast corner of section seventeen, township four south, range eight west, thence north to the Patoka river, thence down the same, with the meanders thereof, thence to the line dividing sections three and four, township two south, of range nine west, thence north to the northeast corner of section sixteen, to .n-ship one, range nine west, thence west to the southwest corner of section eight, in said township, thence north to the line di-

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viding townships one north and one south, thence west to the line dividing ranges nine and ten, thence north to the place of beginning.

Knox. SECT. 43. The district of country within the following boundaries shall form and constitute the county of Knox, to-wit: Beginning at the west branch of White river where the line dividing townships five and six north crosses the same, thence west with said township line to the line dividing ranges nine and ten west, thence due west to the Wabash river, with the meanders thereof, to the mouth of White river, then up the same, with the meanders thereof, to the place of beginning.

Sullivan. SECT. 44. The district of country within the following boundaries shall form and constitute the county of Sullivan, to-wit: Beginning on the Wabash river where the line dividing townships nine and ten north intersects the same, thence east to the line dividing ranges seven and eight west, thence south to the southwest corner of township six north, of range eight west, thence west to the line dividing ranges nine and ten west, thence due west to the Wabash river, thence up the river to the beginning.

Daviess. SECT. 45. The district of country within the following boundaries shall form and constitute the county of Daviess, to-wit: Beginning at the forks of White river, thence up the east fork of said river to the line dividing sections twenty-three and twenty-four, in township one north, of range five west, thence north to the line dividing townships four and five north, thence east to the line dividing ranges four and five west, thence north to the line dividing townships five and six north, thence west to the west fork of White river, and thence down the same, with the meanders of the same, to the place of beginning.

Martin. SECT. 46. The district of country within the following boundaries shall form and constitute the county of Martin, to-wit: Beginning at the northeast corner of township five north, range three west, thence south to the northeast corner of section thirteen, township one north, range three west, thence west to the east fork of White river, thence down said river, with the meanders thereof, to the section line dividing sections twenty-three and twenty-four, township one north, range five west, thence north to the line dividing townships four and five north, thence east to the line dividing ranges four and five west, thence north to the line dividing townships five and six north, thence east to the place of beginning.

Greene. SECT. 47. The district of country within the following boundaries shall form and constitute the county of Greene, to-wit: Beginning at the northeast corner of township eight north, of range three west, thence south to the southeast corner of township six north, of range three west, thence west to the southwest corner of township six north, of range seven west, thence north to the northwest corner of township eight north, of range seven west, thence east to the place of beginning.

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Owen. SECT. 48. The district of country within the following boundaries shall form and constitute the county of Owen, to-wit: Beginning at the southeast corner of township nine north, of range three west, thence west with the said township line to the southwest corner of section thirty-five, in township nine north, of range six west, thence north to the line dividing townships ten and eleven north, thence east to the northeast corner of section three, in township ten north, of range five west, thence north to the southwest corner of section fourteen, in township twelve north, of range five west, thence east to the southwest corner of section fifteen, in township twelve north, of range two west, thence south to the west fork of White river, thence down the same to the line dividing ranges two and three west, and thence south with said range line to the place of beginning.

Clay. SECT. 49. The district of country within the following boundaries shall form and constitute the county of Clay, to-wit: Beginning at the southwest corner of township nine north, of range seven west, thence east to the southeast corner of section thirty-four, in township nine north, of range six west, thence north to the line dividing townships ten and eleven, thence east to the southwest corner of section thirty-five, in township eleven north, of range five west, thence north to the southeast corner of section fifteen, in township twelve north, of range five west, thence west to the line dividing ranges five and six west, thence north to the line dividing townships thirteen and fourteen north, thence west to the northwest corner of section four, in township thirteen north, of range seven west, thence south to the line dividing townships twelve and thirteen, thence west to the line dividing ranges seven and eight, thence south to the place of beginning.

Vigo. SECT. 50. The district of country within the following boundaries shall form and constitute the county of Vigo, to-wit: Beginning at a point on the Wabash river, where the line dividing townships nine and ten strikes the same, thence east to the line dividing ranges seven and eight, thence north to the line dividing townships twelve and thirteen north, thence east to the southeast corner of section thirty-two, township thirteen, range seven west, thence north to the line dividing townships thirteen and fourteen north, thence west to the state line, thence south with the state line to the Wabash river, thence down the same to the place of beginning.

Vermillion. SECT. 51. The district of country within the following boundaries shall form and constitute the county of Vermillion, to-wit: Beginning on the west bank of the Wabash river, where the line dividing townships thirteen and fourteen north crosses the same, thence west to the state line, thence north with the state line to the line dividing townships nineteen and twenty north, thence east to the Wabash river, thence down the same, with the meanders thereof, to the place of beginning.

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SECT. 52. The district of country within the following boundaries shall form and constitute the county of Parke, to-wit: Beginning on the Wabash river where the line dividing townships thirteen and fourteen north crosses the same, thence east to the line dividing ranges five and six west, thence north to the line dividing townships sixteen and seventeen north, thence west to the southwest corner of section thirty-four, in township seventeen north, in range six west, thence north to the line dividing townships seventeen and eighteen north, thence west to the Wabash river, thence down the same to the place of beginning. Parke.

SECT. 53. The district of country within the following boundaries shall form and constitute the county of Putnam, to-wit: Beginning at the southeast corner of section thirteen, in township twelve north, of range three west, thence north to the line dividing townships sixteen and seventeen north, thence west to the line dividing ranges five and six west, thence south to the southwest corner of section eighteen, township twelve north, of range five west, thence east to the place of beginning. Putnam.

SECT. 54. The district of country within the following boundaries shall form and constitute the county of Hendricks, to-wit: Beginning at the southeast corner of section twenty, in township fourteen north, of range two east, thence west to the line dividing ranges two and three west, thence north to the northwest corner of section eighteen, in township seventeen, in range two west, thence east to the northeast corner of the northwest quarter of section seventeen, township seventeen, range two east, thence south to the line dividing townships sixteen and seventeen, thence south between sections four and five, to the place of beginning. Hendricks.

SECT. 55. The district of country within the following boundaries shall form and constitute the county of Boone, to-wit: Beginning at the southeast corner of section twelve, township seventeen, range two east, thence north to the northeast corner of the southeast quarter of section thirteen, in township twenty north, of range two east, thence west to the northwest corner of the southwest quarter of section eighteen, in township twenty north, of range two west, thence south to the southwest corner of section seven, in township seventeen north, of range two west, thence east to the place of beginning. Boone.

SECT. 56. The district of country within the following boundaries shall form and constitute the county of Montgomery, to-wit: Beginning at the corners of sections thirty-three and thirty-four, on the township line dividing townships sixteen and seventeen north, range six west, thence north to the line dividing townships twenty and twenty-one north, thence east to the line dividing ranges two and three west, thence south to the line dividing townships sixteen and seventeen north, thence west to the place of beginning. Montgomery.

SECT. 57. The district of country within the following boundaries shall form and constitute the county of Fountain, Fountain.

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to-wit: Beginning where the line dividing townships seventeen and eighteen crosses the Wabash river, thence east to the line running through the centre of range six west, thence north to where the said line strikes the Wabash river, thence down the same, with the meanders thereof, to the place of beginning.

Warren. SECT. 58. The district of country within the following boundaries shall form and constitute the county of Warren, to-wit: Beginning on the west bank of the Wabash river where the township line dividing townships nineteen and twenty north, of range nine west intersects the same, thence west to the range line dividing ranges nine and ten west, thence north to the township line dividing townships nineteen and twenty north, thence west to the state line, thence north with the state line to the township line dividing townships twenty-three and twenty-four north, thence east to the northwest corner of section three, in township twenty-three north, of range six west, thence south to the Wabash river, thence down the same, with the meanders thereof, to the place of beginning.

Tippecanoe. SECT. 59. The district of country within the following boundaries shall form and constitute the county of Tippecanoe, to-wit: Beginning at the southeast corner of township twenty-one north, range three west, thence north to the line dividing townships twenty-four and twenty-five, thence west to the northwest corner of section three, in township twenty-four north, of range six west, thence south to the line dividing townships twenty and twenty-one, thence east to the place of beginning.

Clinton. SECT. 60. The district of country within the following boundaries shall form and constitute the county of Clinton, to wit: Beginning at the northwest corner of section nineteen, township twenty three north, range two west, thence south to the southwest corner of the northwest quarter of section eighteen, township twenty north, range two west, thence east to the southeast corner of the northeast quarter of section thirteen, township twenty, range two east, thence north to the northeast corner of section twenty-four, township twenty-three, range two east, thence west to the place of beginning.

Carroll. SECT. 61. The district of country within the following boundaries shall form and constitute the county of Carroll, to-wit: Beginning at the southeast corner of section fourteen, township twenty-three north, range one east, thence north to the northeast corner of section twenty-three, township twenty-six north, range one east, thence west to the southwest corner of section fifteen, township twenty-six north, range one west, thence north to the line dividing townships twenty-six and twenty-seven north, thence west to the Tippecanoe river, thence down said river to where the line dividing sections twenty-eight and twenty-nine, township twenty-five north, range three west, intersects the same, thence south to the line dividing townships twenty-four and twenty-five, thence east to the northeast corner

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of township twenty-four north, range three west, thence south to the southwest corner of section eighteen, township twenty-three north, range two west, thence east to the place of beginning.

SECT. 62. The district of country within the following boundaries shall form and constitute the county of Cass, to-wit: Beginning on the west side of the great Miami reservation line, where the township line dividing townships twenty-four and twenty-five intersects the same, thence north nine miles to the northeast corner of section twenty-three, in township twenty-six north, of range one east, thence west eight miles to the corner of sections fifteen, sixteen, twenty-one, and twenty-two, in township twenty-six north, of range one west, thence north three miles to the southeast corner of section thirty-three, township twenty-seven north, of range one west, thence west three miles to the southwest corner of said township twenty-seven north, range one west, thence north twelve miles to the northwest corner of township twenty-eight north, of range one west, thence on the township line dividing townships twenty-eight and twenty-nine east, twenty-two miles to the northeast corner of section three, township twenty-eight north, of range three east, that being the western line of Miami county, thence south on the Miami county line twenty-four miles to a point in the great Miami reserve which, when it is surveyed, will be the southwest corner of section thirty-four, township twenty-five north, of range three east, thence west eleven miles to the place of beginning. Cass.

SECT. 63. The district of country within the following boundaries shall form and constitute the county of Miami, to-wit: Beginning at the southeast corner of section thirty-four, township twenty-five north, range three east, thence north to the line dividing townships twenty-nine and thirty, thence east to the southeast corner of township thirty north, range four east, thence north with the range line to the northwest corner of section nineteen, township thirty north, range five east, thence east to the northeast corner of section twenty-two, same township and range, thence south to the southwest corner of section thirty-five, township twenty-six north, range five east, thence east to the southeast corner of section thirty-two, township twenty-six north, range six east, thence south to the line dividing townships twenty-four and twenty-five north, thence west to the place of beginning. Miami.

SECT. 64. The district of country within the following boundaries shall form and constitute the county of Wabash, to-wit: Beginning at the southeast corner of section thirty-four, township twenty-six north, range five east, thence north to the northwest corner of section twenty-three, township thirty north, range five east, thence east to the range line dividing ranges seven and eight, thence south to the line dividing townships twenty-nine and thirty, thence east to the northeast corner of section five, township twenty-nine north, range eight Wabash.

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thence south to the line dividing townships twenty-five and twenty-six, thence west to the place of beginning.

Grant. SECT. 65. The district of country within the following boundaries shall form and constitute the county of Grant, to-wit: Beginning at the southwest corner of section four, township twenty-two north, range six east, thence north to the line dividing townships twenty-five and twenty-six, thence east to the line dividing ranges nine and ten, thence south to the southeast corner of section one, township twenty-two north, range nine east, thence west to the place of beginning.

Jay. SECT. 66. The district of country within the following boundaries shall form and constitute the county of Jay, to-wit: Beginning at the state line between the states of Ohio and Indiana, at the township line dividing townships twenty-four and twenty-five north, thence west to the northwest corner of section five, in township twenty-four north, range twelve east, thence south to the southwest corner of section thirty-two, in township twenty-four north, range twelve east, thence west to the northwest corner of section four, in township twenty-three north, range twelve east, thence south to the northeast corner of section eight, in township twenty-two north, of range twelve east, thence west to the line dividing ranges eleven and twelve east, thence south to the line dividing townships twenty-one and twenty-two north, thence east to the state line, thence north with the state line to the place of beginning.

Blackford. SECT. 67. The district of country within the following boundaries shall form and constitute the county of Blackford, to-wit: Beginning at the northwest corner of section five, in township twenty-four north, range number twelve east, thence west to the line dividing ranges nine and ten, thence south to the southwest corner of section six, township twenty-two, range ten east, thence east to the southeast corner of section five, township twenty-two, range twelve east, thence north to the line dividing townships twenty-three and twenty-four, thence east to the southwest corner of section thirty-two, township twenty-four, range twelve east, thence north to the place of beginning.

Adams. SECT. 68. The district of country within the following boundaries shall form and constitute the county of Adams, to-wit: Beginning at the state line where the line dividing townships twenty-eight and twenty-nine intersects the same, thence west to the northeast corner of section five, in township twenty-eight north, range thirteen east, thence south to the line dividing townships twenty-four and twenty-five, thence east with the north line of Jay county to the eastern boundary of the State, thence north with the state line, to the place of beginning.

Wells. SECT. 69. The district of country within the following boundaries shall form and constitute the county of Wells, to-wit: Beginning at the northwest corner of section four, township twenty-eight, range thirteen east, thence west to the line dividing ranges ten and eleven, thence south to the line dividing

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townships twenty-five and twenty-six, thence west to the line dividing ranges nine and ten, thence south to the line dividing townships twenty-four and twenty-five, thence east to the south east corner of section thirty-two, township twenty-five, range thirteen, thence north to the place of beginning.

Allen. SECT. 70. The district of country within the following boundaries shall form and constitute the county of Allen, to-wit: Beginning on the eastern line of the state of Indiana where the line dividing townships twenty-eight and twenty-nine north intersects the same, thence north with the state line to the line dividing townships thirty-two and thirty-three north, thence west to the line dividing ranges ten and eleven east, thence south with the range line to the line dividing townships twenty-eight and twenty-nine north, thence east to the place of beginning.

De Kalb. SECT. 71. The district of country within the following boundaries shall form and constitute the county of De Kalb, to-wit: Beginning at the southwest corner of township thirty-three north, of range twelve east, thence east to the east line of the state, thence north with the state line to the line dividing townships thirty-five and thirty-six, thence west to the line dividing ranges eleven and twelve, thence south to the place of beginning.

Steuben. SECT. 72. The district of country within the following boundaries shall form and constitute the county of Steuben, to-wit: Beginning at the southwest corner of township thirty-six, range twelve east, thence east to the line of the state of Indiana, thence north with said line to the line dividing the states of Indiana and Michigan, thence west with the state line to the line dividing ranges eleven and twelve east, thence south to the place of beginning.

Lagrange. SECT. 73. The district of country within the following boundaries shall form and constitute the county of Lagrange, to-wit: Beginning on the state line where the line dividing ranges seven and eight intersects the same, thence east with the state line to the west line dividing ranges eleven and twelve, thence south with the line dividing townships thirty-five and thirty-six, thence west to the line dividing ranges seven and eight, thence north to the place of beginning.

Noble. SECT. 74. The district of country within the following boundaries shall form and constitute the county of Noble, to-wit: Beginning at the northeast corner of township thirty-five, range eleven east, thence west to the line dividing ranges seven and eight east, thence south to the southwest corner of township thirty-three, range eight east, thence east to the southeast corner of township thirty-three north, of range eleven east, thence north to the place of beginning.

Whitley. SECT. 75. The district of country within the following boundaries shall form and constitute the county of Whitley, to-wit: Beginning at the northeast corner of township thirty-two north, of range seven east, thence east to the line dividing ranges ten and eleven east, thence south with the line dividing

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said ranges ten and eleven, to the line dividing townships twenty-nine and thirty, thence west to the line dividing ranges seven and eight east, thence north with the range line to the place of beginning.

Huntington. SECT. 76. The district of country within the following boundaries shall form and constitute the county of Huntington, to-wit: Beginning at the southeast corner of township twenty-six north, of range ten east, thence north to the line dividing townships twenty-nine and thirty north, thence west to the northwest corner of section four, in township twenty-nine north, of range eight east, thence south to the line dividing townships twenty-five and twenty-six north, thence east to the place of beginning.

Kosciusko. SECT. 77. The district of country within the following boundaries shall form and constitute the county of Kosciusko, to-wit: Beginning at the northwest corner of section three, in township thirty-four north, of range four east, thence east with the line dividing townships thirty-four and thirty-five, to the line dividing ranges seven and eight east, thence south with the range line to the southeast corner of section thirteen, in township thirty north, of range seven east, thence west to the southeast corner of section sixteen, in township thirty north, of range four east, thence north with the section line, through the middle of range four, to the place of beginning.

Elkhart. SECT. 78. The district of country within the following boundaries shall form and constitute the county of Elkhart, to-wit: Beginning on the north line of the state where the centre line of range four east strikes the same, thence east to the line dividing ranges seven and eight east, thence south to the line dividing townships thirty-four and thirty-five north, thence west to the central section line of range four east, thence north to the place of beginning.

St. Joseph. SECT. 79. The district of country within the following boundaries shall form and constitute the county of St. Joseph, to-wit: Beginning on the north line of Indiana, where the centre line of range four east strikes the same, thence south to the southeast corner of section sixteen, township thirty-five north, of range four east, thence west to the meridian line, thence south to the southeast corner of section thirty-six, in township thirty-five north, of range one west, thence west to the southwest corner of section thirty-four, in the same township, thence north to the state line, thence east to the place of beginning.

Laporte. SECT. 80. The district of country within the following boundaries shall form and constitute the county of Laporte, to-wit: Beginning at the point on Lake Michigan where the state line between the states of Michigan and Indiana strikes the same, thence east with the said line to the centre of range one west, thence south to the line dividing townships thirty-four and thirty-five north, thence west to the Kankakee river, thence down the middle of said river to the line dividing ranges four

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and five west, thence north to Lake Michigan, thence with the same eastwardly to the place of beginning.

SECT. 81. The district of country within the following boundaries shall form and constitute the county of Porter, to-wit: Beginning at a point on Lake Michigan where the line dividing ranges four and five west intersects the same, thence south to the Kankakee river, thence down the same to the centre line of range seven west, thence north to Lake Michigan, thence eastwardly with the lake to the place of beginning. Porter.

SECT. 82. The district of country within the following boundaries shall form and constitute the county of Lake, to-wit: Beginning on Lake Michigan where the centre line of range seven west intersects the same, thence south to the Kankakee river, thence down the same to the state line, thence north with the same to Lake Michigan, thence eastwardly with the lake to the place of beginning. Lake.

SECT. 83. The district of country within the following boundaries shall form and constitute the county of Starke, to-wit: Beginning at the northeast corner of township thirty-four, range one west, thence south to the southeast corner of township thirty-two, range one west, thence west to the line dividing ranges four and five west, thence north to the Kankakee river, thence up the middle of said river to the line dividing townships thirty-four and thirty-five north, thence east along said line to the place of beginning. Starke.

SECT. 84. The district of country within the following boundaries shall form and constitute the county of Marshall, to-wit: Beginning at the northeast corner of section twenty-one, in township thirty-five north, of range four east, thence south to the line dividing townships thirty-one and thirty-two north, thence west to the meridian line, thence north to the northwest corner of section nineteen, in township thirty-five north, of range one east, thence east to the place of beginning. Marshall

SECT. 85. The district of country within the following boundaries shall form and constitute the county of Fulton, to-wit: Beginning at the northeast corner of section four, in township thirty-one north, range four east, thence south to the southeast corner of section sixteen, in township thirty north, range four east, thence east to the line dividing ranges four and five, thence south to the line dividing townships twenty-nine and thirty, thence west to the northwest corner of section two, in township twenty-nine north, range three east, thence south to the line dividing townships twenty-eight and twenty-nine, thence west to the principal meridian line, thence north to the line dividing townships thirty-one and thirty-two, thence east to the place of beginning. Fulton.

SECT. 86. The district of country within the following boundaries shall form and constitute the county of White, to-wit: Beginning at the northwest corner of section three, township twenty-eight north, range five west, thence south to the White.

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northwest corner of section thirty-four, in the same township, thence west to the northwest corner of section thirty-four, in township twenty-eight north, range six west, thence south to the line dividing townships twenty-four and twenty-five, thence east to the southeast corner of section thirty-two north, range three west, thence north to the northwest corner of section thirty-three, in township twenty-six north, range three west, thence east to the Tippecanoe river, thence up the same with the meanders thereof to the line dividing townships twenty-six and twenty-seven, thence east to the line dividing ranges one and two west, thence north to the line dividing townships twenty-eight and twenty-nine north, thence west to the place of beginning.

Benton.

SECT. 87. The district of country within the following boundaries shall form and constitute the county of Benton, to-wit: Beginning at the northeast corner of section four, in township twenty-six, range six west, thence south to the line dividing townships twenty-three and twenty-four north, thence west to the state line, thence north to the line dividing townships twenty-six and twenty-seven, thence east to the place of beginning.

Jasper.

SECT. 88. The district of country within the following boundaries shall form and constitute the county of Jasper, to-wit: Beginning on the state line where the line dividing townships twenty-six and twenty-seven intersects the same, thence east to the southwest corner of section thirty-four, township twenty-seven north, range six west, thence north to the northwest corner of section thirty-four, township twenty-eight, range six west, thence east to the northwest corner of section thirty-four, township twenty-eight, range five west, thence north to the line dividing townships twenty-eight and twenty-nine, thence east to the line dividing ranges four and five west, thence north to the Kankakee river, thence down the same with the meanders thereof to the state line, thence south to the place of beginning.

Pulaski.

SECT. 89. The district of country within the following boundaries shall form and constitute the county of Pulaski, to-wit: Beginning at the southeast corner of township twenty-nine north, range one west, thence west to the line dividing ranges four and five west, thence north to the line dividing townships thirty-one and thirty-two, thence east to the meridian line, thence south to the place of beginning.

Boundaries, how to run on range, township, and section lines.

SECT. 90. When any boundary line of any county is described as running east, west, north, or south, from any point in a range, township, or section line, such boundary shall be deemed to run with and along such range, township, or section line, unless the contrary is obviously intended.

Courses indicated by the magnetic needle, how ascertained.

SECT. 91. All lines which in the boundaries of any county are clearly intended to be described by courses indicated by the magnetic needle, are respectively to be taken as the magnetic needle pointed, at the several times when such lines were originally established.

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SECT. 92. Whenever two counties are separated from each other by a river or creek, the middle of the channel of such river or creek, shall be the division line between them, unless otherwise provided in the description of the boundaries of such counties. Mid channel of river, when to be the dividing line of counties.

SECT. 93. Whenever any part of the boundary of any county is the Ohio river, all process issuing to the officers of such county may be served on the said river, so far as the same is the boundary of this state. Service of process on Ohio river where same is a co'ty boundary.—Act of Virginia, page 19.

ARTICLE II.

Of Townships.

SECTION
1. Formation of townships.
2. Map of county to be made.—Same where filed and kept.
3. Description of boundaries to be recorded.
4. Present townships to remain until altered.

SECTION 1. The board of county commissioners in each county may lay off and divide the same into any number of townships, that the convenience of the citizens may require, accurately defining the boundaries thereof; and may, from time to time, make such alterations in the number and boundaries of such townships as they may deem proper. Formation of townships.

SECT. 2. If the same has not been done already, said board shall cause an accurate map of the county to be made, which shall exhibit the boundaries of each township, and of each part or parcel of land, noting thereon the owner's name, and number of acres, as specified on the tax duplicate of the county, and also the locality and name of each town or city in the county; and said map shall be filed and kept in the office of the county auditor. Map of county to be made. Where filed and kept.

SECT. 3. The description of the boundaries of each township shall be recorded at full length in the book containing the proceedings of such board, as also all alterations in such boundaries, and of all new or additional townships which may be formed. Description of boundaries.

SECT. 4. The townships now laid off and established shall remain as they now are, subject to alteration or subdivision, as provided in this article. Present townships to remain until, &c.

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CHAPTER 3.

OF THE DIVISION OF THE STATE INTO CONGRESSIONAL DISTRICTS, AND DISTRICTS FOR MEMBERS OF THE GENERAL ASSEMBLY.

ARTICLE I. Of the congressional districts.
ARTICLE II. Of the senatorial and representative districts, for the election of members of the general assembly.

ARTICLE I.

Of the Congressional Districts.

SECTION
1. State divided into ten districts.
SECTION
2. Limits and designation of each district.

SECTION 1. The state shall be divided into ten districts, for the election of representatives in the congress of the United States; each of which districts shall be entitled to elect one representative.

SECT. 2. The limits and designation of each of said districts shall be as follows:

1st district. The counties of Posey, Vanderburgh, Gibson, Pike, Dubois, Warrick, Spencer, Perry, Crawford, Orange, and Harrison, shall constitute the first district.

2d. The counties of Clark, Washington, Jackson, Scott, Jefferson, Jennings, and Floyd, shall constitute the second district.

3d. The counties of Dearborn, Ripley, Rush, Decatur, Switzerland, and Franklin, shall constitute the third district.

4th. The counties of Fayette, Union, Wayne, and Henry, shall constitute the fourth district.

5th. The counties of Hamilton, Marion, Hancock, Shelby, Johnson, Madison, Bartholomew, and Brown, shall constitute the fifth district.

6th. The counties of Monroe, Lawrence, Martin, Daviess, Knox, Owen, Greene, Morgan, and Sullivan shall constitute the sixth district.

7th. The counties of Vigo, Clay, Putnam, Parke, Vermillion, and Hendricks, shall constitute the seventh district.

8th. The counties of Montgomery, Fountain, Warren, Boone, Tippecanoe, Clinton, and Carroll, shall constitute the eighth district.

9th. The counties of Jasper, White, Cass, Miami, Fulton, Pulaski, Kosciusko, Marshall, Starke, Elkhart, St. Joseph, Laporte, Porter, Lake, Wabash, and Benton, shall constitute the ninth district.

10th. The counties of Randolph, Delaware, Grant, Jay, Blackford, Adams, Wells, Huntington, Allen, Whitley, Noble, De Kalb, Steuben, and Lagrange, shall constitute the tenth district.

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ARTICLE II.

Of the senatorial and representative districts for the election of members of the general assembly.

SECTION	SECTION
3. Apportionment of 1841 continued as follows:	9. Representative districts designated.
4. Senatorial districts designated.	10. Ib.
5. Representative districts designated.	11. Ib.
6. Ib.	12. Ib.
7. Ib.	13. Ib.
8. Ib.	14. Senators now elected to retain their seats.

SECTION 3. The act entitled "An act for the apportionment of senators and representatives in the general assembly of the state of Indiana," approved January 16th, 1841, is continued in force for the period therein limited, and is published with the revised statutes as follows: Act of 1841 continued in force.

SECT. 4. "For the purpose of electing senators to the general assembly of this state, for the ensuing five years, the state shall be, and is hereby divided into the following districts, each of which shall be entitled to one senator: Putnam, one; Montgomery, one; Parke, one; Knox, one; Lawrence, one; Vermillion, one; Clinton and Carroll, one; Vigo, Clay, and Sullivan, one; Harrison, one; Orange and Crawford, one; Daviess and Martin, one; Monroe and Brown, one; Perry, Spencer, and Warrick, one; Owen and Greene, one; Vanderburgh and Posey, one; Gibson, Pike, and Dubois, one; Hendricks, one; Shelby, one; Marion, one; Madison and Hancock, one; Hamilton and Boone, one; Henry, one; Fayette and Union, one; Franklin, one; Dearborn, one; Ripley, one; Switzerland, one; Jennings and Bartholomew, one; Clark, one; Floyd, one; Jefferson, one; Jackson and Scott, one; Washington, one; Fountain, one; Tippecanoe, one; Grant and Delaware, one; Johnson, one; Morgan, one; Decatur, one; Rush, one; Cass, Miami, and Wabash, one; St. Joseph, Marshall, and Fulton, one; Elkhart, Kosciusko, and Whitley, one; Lagrange, Steuben, Noble, and De Kalb, one; Allen, Adams, Wells, and Huntington, one; Randolph, Blackford, and Jay, one; Laporte, Lake, and Porter, one; Warren, White, Pulaski, Jasper, Benton, and Starke, one; and the county of Wayne shall be entitled to two senators. Senatorial districts.

SECT. 5. In electing representatives to the general assembly for the ensuing five years, the several counties of Parke, Rush, Vigo, Clark, Harrison, Washington, Marion, Jefferson, Franklin, Fayette, Laporte, and Henry, shall have each two representatives; the counties of Wayne and Dearborn, each three representatives; the counties of Orange, Shelby, Warrick, Vanderburgh, Knox, Sullivan, Clay, Vermillion, Warren, Clinton, Carroll, Morgan, Johnson, Jennings, Floyd, Scott, Jackson, Switzerland, Ripley, Decatur, Cass, Elkhart, St. Joseph, Allen, Representative districts.

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Hendricks, Delaware, Grant, Posey, Gibson, Spencer, Perry, Randolph, Union, Greene, Owen, Pike, Dubois, and Crawford, each one representative.

Representative districts.

SECT. 6. The counties of Miami and Wabash shall elect one representative jointly; the counties of Huntington, Blackford, and Wells, shall elect one representative jointly; the counties of Whitley and Kosciusko shall elect one representative jointly; the counties of Marshall, Fulton, and Starke, shall elect one representative jointly; the counties of White, Pulaski, Jasper, and Benton, shall elect one representative jointly; the counties of Noble and Lagrange shall elect one representative jointly; the counties of Steuben and De Kalb shall elect one representative jointly; the counties of Adams and Jay shall elect one representative jointly; and the counties of Porter and Lake shall elect one representative jointly.

Ib.

SECT. 7. The counties of Montgomery and Putnam shall elect each two representatives; and said counties of Montgomery and Putnam shall elect one additional representative alternately, commencing with the county of Montgomery.

Ib.

SECT. 8. The county of Fountain shall elect one representative, and the county of Tippecanoe shall elect two representatives; and said county of Tippecanoe shall elect one additional representative in the years 1843 and 1844, and Fountain shall elect one additional representative in the years 1842 and 1845.

Ib.

SECT. 9. The counties of Hamilton and Boone shall each elect one representative; and said counties of Hamilton and Boone shall elect one additional representative alternately, commencing with the county of Hamilton.

Ib.

SECT. 10. The county of Union shall elect an additional representative in the years 1841 and 1845; the county of Randolph shall elect an additional representative in the year 1843; the county of Rush shall elect one additional representative in the year 1842; the county of Jefferson shall elect an additional representative in the years 1841, 1843, 1844, and 1845.

Ib.

SECT. 11. The counties of Daviess and Martin shall elect one representative jointly in the years 1843 and 1845; and said counties of Daviess and Martin shall elect each one representative in the years 1841, 1842, and 1844.

Ib.

SECT. 12. The counties of Bartholomew and Lawrence shall elect each one representative; the counties of Monroe and Brown shall elect one representative jointly; and the county of Lawrence, and the counties of Monroe and Brown jointly shall elect one additional representative alternately, commencing with the county of Lawrence.

Ib.

SECT. 13. The counties of Madison and Hancock shall each elect one representative; and the said counties of Madison and Hancock shall elect one additional representative alternately, commencing with the county of Hancock. The county of Vigo shall elect one additional representative in the years 1842, 1843, and 1844; and the county of Sullivan one additional representative in the years 1841 and 1845.

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SECT. 14. Where a part of one senatorial district has by this act been attached to another, and there be a senator whose term of service has not expired, in such newly formed district no election for senator shall be held in such district, until the term of service of such senator shall expire." Senators elected to retain seats.

CHAPTER 4.

OF THE STATE, COUNTY, AND TOWNSHIP OFFICERS, EXCEPT OFFICERS IN THE MILITIA.

ARTICLE 1. Of the number of civil officers.
ARTICLE 2. Of the officers elected by the people, and their terms of office, except, &c.
ARTICLE 3. Of the number of justices of the peace in each township, and their term of office.
ARTICLE 4. Of the township officers, how elected, tenure of office.
ARTICLE 5. Of the judges of the supreme court, how appointed, and the tenure of their office.
ARTICLE 6. Of the officers elected by the general assembly, and the tenure of their office.
ARTICLE 7. Of the officers appointed by the governor, and the tenure of their office.
ARTICLE 8. Of the appointment and tenure of office of the clerk and sheriff of the supreme court.
ARTICLE 9. Of the appointment and tenure of office of county surveyor, county agent, and pound keeper.
ARTICLE 10. Of the appointment of masters in chancery.
ARTICLE 11. How offices heretofore created by statute shall be affected by the revised statutes.
ARTICLE 12. Of the commissions and certificates of the election or appointment of civil officers.
ARTICLE 13. Of the persons eligible to office, and their residence before and after their election or appointment.
ARTICLE 14. Of the oath of office, and some general provisions respecting the official bond of officers.
ARTICLE 15. Of compelling certain officers to give additional bond and surety.
ARTICLE 16. Of offices becoming vacant by resignation or otherwise, and giving notice thereof.
ARTICLE 17. Of supplying vacancies in office.

ARTICLE I.

Of the number of civil officers.

SECTION
1. State officers.—1. Governor and lieutenant governor. 2. Judges supreme court. 3. President judges and prosecuting attorneys. 4. Senators and representatives. 5. Secretary, treasurer, auditor, librarian, printer, and governor's private secretary. — 6. Clerk and sheriff of supreme court. 7. State agent, commissioners and agents on public works, and pilots. 8. Officers of state prison. 9. Masters in chancery and notaries public. 10, 11. County officers. 12. Township officers. 13. School township and district officers. — 14. State bank officers.

SECTION 1—*Continued.*

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State officers.

SECTION 1. There shall be elected or appointed, as hereinafter declared or prescribed, the following officers, to-wit:

1. A governor and lieutenant governor.

2. Three judges of the supreme court.

3. One president judge and one prosecuting attorney for each judicial circuit, into which the state may be divided by law.

4. Fifty senators and one hundred representatives of the general assembly.

5. A secretary of state, treasurer of state, auditor of state, state librarian, state printer, and private secretary of the governor.

6. A clerk and sheriff of the supreme court.

7. A state agent; one commissioner of the Wabash and Erie canal east, and one commissioner of said canal west of Lafayette; three agents, one to take charge of the Whitewater canal, one of the Madison and Indianapolis railroad, and one of the New Albany and Vincennes McAdamized turnpike road; and pilots, not exceeding six in number, at the falls of the Ohio.

8. A superintendent, clerk, and visiter of the state prison.

9. Masters in chancery and notaries public.

County officers

10. For each county, one clerk of the circuit court, two associate judges, one probate judge, one sheriff, one coroner, one recorder, three commissioners, one auditor, one treasurer, one assessor, one school commissioner, one surveyor, one county agent, one pound keeper, and a suitable number of inspectors of flour, beef, pork, and tobacco, respectively.

11. A competent number of justices of the peace in each township in the several counties.

Township officers.

12. For each township, one inspector of elections for each place of holding elections therein, and as many constables as may be required by law; one supervisor of roads and highways for each road district; two fence-viewers, and two overseers of the poor.

School township and district officers.

13. In each congressional township, three trustees and one treasurer of such township, and three district trustees for each school district therein.

State bank officers.

14. A president and four directors of the state bank, who are chosen by the general assembly according to the provisions of the charter of the state bank of Indiana.

ARTICLE II.

Of the officers elected by the people, and their tenure of office, except justices of the peace and township officers.

SECTION
2. State and county officers elected by the people.
3. School, township, and district officers.
SECTION
4. Tenure of office of governor and lieutenant governor.
5. When to be chosen.

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SECTION
6. Representatives in general assembly.
7. Senators.
8. Associate judges and clerks of circuit court.
9. Probate judges.
10. Sheriffs and coroners.
11. County commissioners.
12. Choice, how determined, when a tie.
13. Counties to be divided into districts for election of county commissioners.
14. Counties to be divided into districts for election of county commissioners.
15. Counties to be divided into districts for election of county commissioners.
16. Same as to new counties, and counties in which there is no board of comm'rs.
17. County auditor.
18. County treasurer.
19. County assessor.
20. School commissioner.

State and county officers elected by the people.

SECTION 2. The governor and lieutenant governor shall be elected by the qualified electors of the state; and members of the general assembly, associate judges, probate judges, clerks of the circuit court, sheriffs, coroners, recorders, county commissioners, county auditors, treasurers, assessors, and school commissioners shall be elected to office by the qualified electors of their respective districts or counties, at the general election next preceding the expiration of the term of such offices respectively.

School township and district officers.

SECT. 3. The trustees of congressional townships, and trustees of school districts shall be elected in the manner hereinafter prescribed.

Governor and lieutenant governor—term of office. Constitution, art. 4, sec. 3 and 15.

SECT. 4. The governor and lieutenant governor hold their offices during three years, from and after the third day of the first session of the general assembly next ensuing their election, and until their successors are chosen and qualified; and are not eligible respectively to said offices longer than six years in any term of nine years.

When to be chosen.

SECT. 5. The governor and lieutenant governor shall be chosen at each triennial general election, counting from and after the general election in the year of our Lord one thousand eight hundred and sixteen.

Representatives. Constitution, art. 3, sec. 3.

SECT. 6. Representatives in the general assembly are chosen annually on the first Monday in August.

Senators. Constitution, art. 3, sect. 5.

SECT. 7. Senators are chosen for three years on the first Monday in August.

Associate judges. Clerks. Constitution, art. 5, sect. 4, sect. 8. Art. 11, sect. 10.

SECT. 8. Associate judges hold their offices for the term of seven years: Clerks of the circuit courts hold their offices for seven years and no longer, unless reappointed: County recorders continue in office for seven years.

Probate judges.

SECT. 9. Probate judges shall continue in office for seven years from the time of their election, and until their successors are chosen and qualified, if they shall so long behave well.

Sheriffs and coroners. Constitution, art. 4, sect. 25.

SECT. 10. Sheriffs and coroners continue in office two years, and until their successors are chosen and duly qualified: But no person is eligible to the office of sheriff more than four years in any term of six years.

County commissioners.

SECT. 11. At the first election held to choose the first board of county commissioners for any county, the person having the highest number of votes shall continue in office for three years;

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the person having the next highest number of votes, for two years; and the person having the next highest number of votes, for one year: And annually thereafter, one commissioner shall be elected who shall continue in office for three years, and until his successor is elected and qualified.

How determined, when a tie.

SECT. 12. If two or more persons, at such first election, shall have the same number of votes, their term of office shall be determined by lot, under the direction of the board of canvassers returning said election.

Counties divided into districts.

SECT. 13. Each county shall be divided into three districts, as nearly equal as may be, and numbered districts one, two, and three; subject, however, to alteration every three years and not oftener; and one of said commissioners shall be chosen from each of said districts by the vote of the whole county.

Ib.

SECT. 14. The districts now formed shall remain as already established, subject to alteration as provided in the previous section.

Ib.

SECT. 15. Each county, not divided into districts, in which there is a board of county commissioners, shall be laid off into such districts by said board, at its first session held after the publication of these revised statutes; and the commissioners of such county shall thereafter be chosen from said districts by the voters of the county, as the previous commissioners shall go out of office, so as to place one commissioner in each district.

New counties and counties in which there is no board of commissioners, how divided.

SECT. 16. In any new county, or in any other county, in which there is no board of county commissioners, and for which it shall become necessary to elect commissioners, such districts not having been formed, it shall be the duty of the sheriff of such county, to divide the same into proper districts as is required to be done by the board of county commissioners, in the fifteenth section of this chapter, and such commissioners shall be chosen, and their election and terms of office shall be governed, as provided in the preceding sections of this chapter, respecting the election and terms of office of county commissioners.

County auditor.

SECT. 17. The county auditor for each county shall continue in office for five years from the first Monday of March next succeeding his election, and until his successor is elected and qualified.

County treasurer.

SECT. 18. The county treasurer for each county shall hold his office for the term of three years from and after the first Monday in March next succeeding his election, and until his successor is elected and qualified.

County assessor.

SECT. 19. The county assessor for each county shall hold his office for the term of two years from the time of his election, and until his successor is elected and qualified.

School commissioner.

SECT. 20. Each school commissioner shall hold his office for the term of three years from the time of his election, and until his successor is elected and qualified.

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ARTICLE III.

Of the number of justices of the peace in each township, and their term of office.

SECTION
21. How elected, and term of office.
22. How apportioned among townships.
23. Ib.
24. How, when justice is thrown into a new township.
SECTION
25. How, when thereby more than the proper number are thrown into a township.

SECT. 21. A competent number of justices of the peace are to be elected by the qualified electors in each township in the several counties; and are to continue in office five years, if they shall so long behave well; whose powers and duties shall, from time to time, be regulated and defined by law. How elected—term and duties. Constitution, art. 5, sect. 12.

SECT. 22. The board of county commissioners shall have power at any time, to assign to each township in their several counties, a competent number of justices of the peace, not exceeding three to each township, except in the cases provided for in the next section. How apportioned among townships.

SECT. 23. When, in the opinion of the board of county commissioners, it shall be necessary, they may order not to exceed two additional justices of the peace to be elected by the electors of the proper township, to reside at the county seat, and one additional justice of the peace, to be elected in like manner, to reside in any other town in said county. Ib.

SECT. 24. When any justice of the peace, by the formation of a new township, shall be brought within the limits thereof, he shall constitute one of the justices of the peace in the number assigned to such new township, and shall continue in office until the expiration of the term for which he was elected. How, when justice is thrown into a new township.

SECT. 25. If, by annexing a part of one township to another, there should be more than the proper number of justices of the peace within the limits of the township to which such addition shall have been made, any justice of the peace brought within such township shall, notwithstanding, hold and exercise his office therein, until the expiration of his term of office; but no successor shall be elected to fill any vacancy, in his said office which may be occasioned by the expiration of his said term, or otherwise; and whenever any township, in consequence of a part of it being taken to form a new township, or to be annexed to any other township, shall be deprived of its proper number of justices of the peace, the vacancy thus produced shall be supplied as in other cases. How, when thereby more than the proper number are thrown into a township.

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ARTICLE IV.

Of township officers: how elected: tenure of office.

SECTION
26. How chosen and term of office.
27. When county commissioners shall appoint, and for how long.

How chosen and term of office.

SECT. 26. Inspectors of elections, constables, supervisors of roads and highways, fence viewers, and overseers of the poor, shall be chosen by the qualified electors of their respective townships, and shall continue in office for one year, and until their successors are chosen and qualified.

When county commissioners shall appoint and for how long.

SECT. 27. Whenever any board of county commissioners shall have divided any new county into townships, or whenever any additional township or townships shall have been formed in any county previously divided into townships, such board shall appoint the requisite number of inspectors of elections, constables, supervisors of roads and highways, fence viewers, and overseers of the poor, for such township; and all officers thus appointed shall continue in office until their successors are elected and qualified.

ARTICLE V.

Of the officers elected by the general assembly, and the tenure of their offices.

SECTION
28. Officers to be elected by joint ballot.
29. Secretary of state—his term of office and how commissioned.
30. Treasurer and auditor of state.
31. President judges of circuit courts.
32. Prosecuting attorneys.
33. State librarian.
34. State printer.
35. State agent.
36. Agents on public works.
37. Superintendent of state prison.

SECT. 28. The following officers shall be elected by joint ballot of both houses of the general assembly:

OFFICERS REQUIRED BY THE CONSTITUTION.

1. The secretary of state.
2. The treasurer of state.
3. The auditor of state.
4. President judges of the circuit courts.

The following officers, provided for by law, shall be elected by joint viva voce vote of both houses of the general assembly:

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5. Prosecuting attorneys.*
6. The state librarian and state printer.
7. Agent of state.
8. Commissioner of the Wabash and Erie canal, east of Lafayette.
9. Commissioner of the Wabash and Erie canal west of Lafayette.
10. The commissioner of the Indianapolis division of the central canal:
11. The agent of the White Water canal.
12. The agent of the Madison and Indianapolis railroad.
13. The agent of the New Albany and Vincennes turnpike road.
14. The superintendent of the state prison.

Secretary of state, term and commission. Constitution art. 4, sect 21

SECT. 29. The secretary of state is commissioned by the governor for four years, and until a new secretary is chosen and qualified.

Treasurer and auditor of state. Constitution, art. 4, sec. 24.

SECT. 30. The treasurer of state and auditor of state hold their offices for three years, and until their successors are chosen and qualified.

President judges. Const. art. 5, sec. 4.

SECT. 31. President judges hold their offices during the term of seven years, if they so long behave well.

Prosecuting attorneys.

SECT. 32. Prosecuting attorneys shall hold their offices for the term of two years from and after their election, and until their successors are chosen and qualified.

State librarian.

SECT. 33. The state librarian shall hold his office for the term of three years from and after the time of his election.

State printer.

SECT. 34. The state printer shall hold his office for the term of three years, and until his successor is chosen and qualified.

State agent.

SECT. 35. The agent of state shall continue in office for the term of two years from the time of his election, and until his successor is chosen and qualified.

Agents of Whitewater canal, Madison and Indianapolis railroad, &c.

SECT. 36. The agents of the Whitewater canal, the Madison and Indianapolis railroad, the New Albany and Vincennes turnpike road, and the agent of the Indianapolis division of the central canal, shall continue in office for the term of two years from the time of their election, respectively; subject to removal, at any time, by joint resolution of the general assembly.

Superintendent of state prison.

SECT. 37. The superintendent of the state prison shall hold his office for five years, and until a successor is chosen and qualified; subject to removal, at any time, by joint resolution of the general assembly, for misconduct, inefficiency, or neglect of duty in his office.

*Now to be elected by the voters of each judicial circuit; see act approved February 11th, 1843, chapter 15, appendix.

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ARTICLE VI.

Of the officers appointed by the governor, and the tenure of their offices.

SECTION
38. Private secretary.—Notaries public.—Clerk and visiter to state prison.—And pilots.
39. Term of office of private secretary.
40. Term of office of notary public.
41. Term of office of clerk of state prison.
42. Term of office of visiter to state prison, and when appointed.
43. Term of office of pilots.

Private sec'y, notaries public, clerk of state prison, visiter to state prison, and six pilots.

SECT. 38. The governor shall appoint one private secretary of the governor; as many notaries public in each county as he may deem necessary; one clerk of the state prison; a visiter of the state prison; and skilful and experienced persons, not exceeding six in number, to act as pilots at the falls of the river Ohio, in this state.

Private secretary—term of office.

SECT. 39. The private secretary of the governor shall continue in office for the term of one year, if he shall so long behave well.

Notary public.

SECT. 40. Each notary public shall hold his office for the term of five years, if he shall so long behave well.

Clerk of state prison.

SECT. 41. The clerk of the state prison shall continue in office for the term of five years, subject to removal at any time, for incompetency, neglect of duty, or maleconduct in office.

Visiter to state prison.

SECT. 42. The visiter of the state prison shall be appointed annually, in the month of February, and shall hold his office for the term of one year. No person shall be appointed such visiter who resides in the town of Jeffersonville, or its vicinity.

Pilots.

SECT. 43. The pilots at the falls of the Ohio shall continue in office during good behavior, subject to removal as hereinafter provided.

ARTICLE VII.

Of the judges of the supreme court, how appointed, and the tenure of their offices.

SECTION
44. How appointed.
45. Term of office.

How appointed.

SECT. 44. The judges of the supreme court are appointed by the governor, by and with the advice and consent of the senate.

Term of office.

SECT. 45. The judges of the supreme court hold their offices during the term of seven years, if they shall so long behave well.

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ARTICLE VIII.

Of the appointment and tenure of office of the clerk and sheriff of the supreme court.

SECTION
46. Clerk.
SECTION
47. Sheriff.

SECT. 46. The supreme court appoints its own clerk, who is to continue in office for seven years, and no longer, unless re-appointed. Clerk. Constitution, art. 5, sec. 8.

SECT. 47. The supreme court shall have power to appoint its own sheriff, who may be removed at any time by said court for inefficiency, neglect of duty, or maleconduct in office. Sheriff.

ARTICLE IX.

Of the appointment and tenure of office of county surveyor, county agent, and pound keeper.

SECTION
48. Manner of appointment and term of county surveyor and agent.
SECTION
49. Same as to pound keeper.

SECT. 48. There shall be appointed, triennially, in each county, by the board of county commissioners thereof, one county agent and one county surveyor, who shall respectively hold their offices for three years, and until a successor is chosen and qualified, if they shall so long behave well. Appointment of surveyor and county agent.

SECT. 49. One pound keeper shall be appointed in each county by the board of county commissioners thereof; who shall continue in office for the term of one year from the time of his appointment, and until his successor is chosen and qualified. Pound keeper.

ARTICLE X.

Of the appointment of masters in chancery.

SECT. 50. The president judges of the circuit courts, in their respective circuits, may appoint as many masters in chancery as such judges may find necessary, who shall receive the appointment in writing from the judge making the same, and shall continue in office until removed by the court. President judges of circuit court to appoint—term of office.

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ARTICLE XI.

How offices, heretofore created by statute, shall be affected by the revised statutes.

SECTION
51. Offices, when not vacated by repeal of law.
SECTION
52. Offices, when abolished.

Offices not vacated by repeal of law.

SECT. 51. The repeal, by any act or statutory provision contained in these revised statutes, of any act or statutory provision which is revised, amended, or modified, and re-enacted herein, and by virtue of which any office shall be held, at the time such repeal shall take effect, shall not be construed to vacate such office; but such office shall be held, and shall continue, subject to the provisions of law in force after the repeal of such act or statutory provision.

Offices, when abolished.

SECT. 52. But where any office is abolished by the repeal of any act, and such act, or so much thereof as establishes such office, is not re-enacted in these revised statutes, such office shall cease at the time such repeal shall take effect.

ARTICLE XII.

Of the commissions and certificates of the election or appointment of civil officers.

SECTION
53. Commissions, how issued.
54. What officers shall be commissioned.
55. Members of general assembly, how certified.
56. County officers, how certified.
57. Township officers, how certified.
SECTION
58. Certificates, how to be made by board of county commissioners.
59. Certificates, how signed.
60. Commissions and certificates for vacancies.

Commissions, how issued.

SECT. 53. All commissions of officers are issued in the name and by the authority of the state of Indiana, and sealed with the state seal, and signed by the governor, and attested by the secretary of state.

What officers shall be commissioned.

SECT. 54. All officers (except members of the general assembly) specially designated in the constitution, and all officers who are elected or appointed by the general assembly, and also all probate judges, and all officers appointed by the governor, or by the governor by and with the advice and consent of the senate, shall be commissioned by the governor.

Members of general assembly, how certified.

SECT. 55. Members of the general assembly shall receive certificates of election, as prescribed in the next chapter.

County officers.

SECT. 56. All county officers elected by the people, and who are not commissioned by the governor, and also all con-

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stables, shall receive certificates of their election from the clerk of the circuit court of their proper county.

Township officers.

SECT. 57. Township officers, not included in the preceding sections of this article, shall receive certificates of their election from the board of judges of the townships respectively for which they shall be elected.

Certificates from county commissioners.

SECT. 58. Whenever any person shall be appointed to office by the board of county commissioners, a certificate of such appointment, signed by the county auditor, and sealed with the seal of said board, shall be issued to such person.

Certificates, how signed.

SECT. 59. The certificate of the appointment of officers, when no special provision is made by law, shall be signed by the presiding officer of the board or court, or by the person or officer making the appointment.

Commissions and certificates for vacancies.

SECT. 60. Any officer elected or appointed to fill any vacancy, shall be commissioned, or shall receive a certificate of such election or appointment from the proper officer or board, as in other cases of election or appointment to such office.

ARTICLE XIII.

Of the persons eligible to office, and their residence before and after their election or appointment.

SECTION

61. More than one lucrative office not to be held.
62. Clerks of circuit courts may be recorders.
63. Qualifications for governor.
64. Who may not be governor.
65. Qualifications for lieuten'nt governor.
66. Qualifications for senator.
67. Qualifications for representative.
68. Who disqualified as senator and representative.
69. Same.
70. Bribery shall disqualify.
71. Certificate of qualifications required of clerk of circuit court.
72. Certificate of qualifications required of probate judges.
73. Qualifications for county and township officers.
74. Residence required for appointment.
75. Residence required after appointment, and offices where to be kept.
76. Residence required of executive officers.

Not more than one lucrative office. Const. art. 11, sec. 13.

SECT. 61. No person can hold more than one lucrative office at the same time, except as in the constitution expressly permitted.

Clerks of circuit courts may be recorders. Constitution, art. 11, sec. 10.

SECT. 62. Nothing contained in the constitution is to be so construed as to prevent clerks of the circuit courts from holding the office of recorder.

Governor, qualifications for. Constitution, art. 4, sec. 4.

SECT. 63. No person is eligible to the office of governor, unless he shall be, at the time of his election, at least thirty years of age, shall have been a citizen of the United States ten years, and have resided in the state five years next preceding his election, unless he shall have been absent on the business of this state or of the United States.

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Who may not be governor.

SECT. 64. No member of congress, or person holding any office under the United States or this state, may exercise the office of governor or lieutenant governor.

Lieutenant governor.

SECT. 65. No person is eligible to the office of lieutenant governor, unless he possess the same qualifications required for governor.

Senator, qualifications.

SECT. 66. No person is eligible to the office of senator in the general assembly, unless he shall have attained the age of twenty-five years, and shall be a citizen of the United States, and shall, next preceding the election, have resided two years in the state, the last twelve months in the county or district in which he may be elected, if the county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken, unless he shall have been absent on the public business of the United States, or of this state, and shall, moreover, have paid a state or county tax.

Representative, qualifications for.

Constitution, art. 3, sect. 4.

SECT. 67. No person is eligible to the office of representative in the general assembly, unless he shall have attained the age of twenty-one years, and shall be a citizen of the United States, and an inhabitant of this state; and shall have also resided within the limits of the county in which he shall be chosen, one year next preceding his election, if the county shall have been so long erected; but if not, then within the limits of the county or counties out of which it shall have been taken, unless he shall have been absent on public business of the United States, or of this state, and shall have paid a state or county tax.

Certain persons disqualified. Same, art. 3, sect. 20.

SECT. 68. No person holding any office under the authority of the president of the United States, or of this state, militia officers excepted, is eligible to a seat in either branch of the general assembly, unless he resign his office previous to his election; nor is any member of either branch of the general assembly, during the time for which he may have been elected, eligible to any office, the appointment of which is vested in the general assembly.

Collectors and holders of public money disqualified until, &c. Constitution, art. 3, sect. 26.

SECT. 69. No collector or holder of public money can have a seat in either house of the general assembly, until he shall have accounted for and paid into the treasury all sums for which he may be accountable.

Bribery to disqualify, when. Constitution, art. 11, sect. 5.

SECT. 70. Every person is disqualified from serving as governor, lieutenant governor, senator, or representative, for the term for which he may have been elected, who shall be convicted of having given or offered any bribe, treat, or reward, to secure his election.

Clerk of circuit court, certificate required of qualification. Constitution, art. 5, sect. 8.

SECT. 71. No person is eligible to the office of clerk of the circuit court, in any county, unless he shall first have obtained from one or more of the judges of the supreme court, or from one or more of the presidents of the circuit courts, a certificate that he is qualified to execute the duties of the office of clerk of the circuit court.

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SECT. 72. No person shall be commissioned or appointed judge of any probate court, until he shall first have obtained a certificate from a judge of the supreme court, or from the president judge of a circuit court, that he possesses the requisite legal knowledge and qualifications to discharge the duties appertaining to the said office of probate judge. Judge of probate court. Same.

SECT. 73. No person shall be eligible to any county or township office, unless he shall have attained the age of twenty-one years, and shall be, at the time of his election, a qualified elector of the county in which he may be elected. Qualifications for county and township officers.

SECT. 74. No person can be appointed as a county officer, within any county, who shall not have been a citizen and an inhabitant therein, one year next preceding his appointment, if the county shall have been so long erected; but if the county shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken. Residence required when appointed. Constitution, art. 11, sect. 14

SECT. 75. All officers are required to reside within the state; and all district, county, or town officers, within their respective districts, counties, or towns, (the trustees of the town of Clarksville excepted,) and keep their respective offices at such places as may be directed by law. Residence afterwards, and offices where to be kept. Constitution, art. 11, sect. 6.

SECT. 76. The governor, secretary of state, treasurer of state, and auditor of public accounts, are severally required to reside, and keep all the public records, books, and papers, in any manner relating to their respective offices, at the seat of government. Residence of executive officers. Constitution, art. 12, sect. 6.

ARTICLE XIV.

Of the oath of office, and some general provisions respecting the official bond of officers.

SECTION
77. Oath of office.
78. Oath when to be endorsed on commission.
79. Oath of members of the general assembly.
80. Oath of governor and lieutenant governor.
81. Oath, before whom to be taken and subscribed.
82. Oath, as to officers appointed by county commissioners.
83. When to be taken.
84. Oath, certified copy of, where to be deposited.
85. Oath, same as principal to be taken by deputies.
86. Official bonds, where filed.

SECTION
87. Official bonds of secretary of state and clerk of circuit court.—Copies of clerk's bond, where filed.
88. Such copies may be sent by mail, and when.
89. Official bonds to be safely kept and copies given.
90. Official bonds, surety thereon how approved.
91. Official bonds not to be filed until approved.
92. Penalty for exercising office without oath or bond.
93. Such bonds to whom made payable.
94. Extent and nature of liability thereon.
95. Ib.
96. Same to be for benefit of all persons injured.

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SECTION
97. Several recoveries may be had thereon until penalty is exhausted.
98. Bond not void although informal or defective.
99. Provisions of this article to be applied to all officers.
100. Certified copies of bonds to be evidence.

Oath of office. Constitution, art. 11, sect. 12.

SECT. 77. Every person chosen or appointed to any office of trust or profit under the authority of this state, is required before entering on the duties of said office, to take an oath or affirmation, before any person lawfully authorized to administer oaths, to support the constitution of the United States, and the constitution of this state; and also an oath of office, which shall be in the form following:

"I do solemnly swear," or 'affirm,' as the case may be, "that I will support the constitution of the United States, and the constitution of the state of Indiana, and that I will faithfully discharge the duties of the office of , according to the best of my ability."

Oath when to be endorsed on commission.

SECT. 78. Said oath, except in the cases specified in the next two sections, shall be endorsed on the commission, or certificate of election, or appointment, of such officer, and signed by him, and certified by the officer before whom such oath of office or affirmation shall have been taken, and the officer administering such oath shall deliver to the person taking the same a certified copy thereof.

Oath of members of the general assembly.

SECT. 79. Members of the general assembly shall take the prescribed oath when they assume their seats as such members, and an entry thereof shall be made on the journal of the proper house.

Oath of governor and lieutenant governor.

SECT. 80. The governor and lieutenant governor shall respectively take said oath, in the presence of both houses of the general assembly, met in convention for that purpose, and an entry thereof shall be made on the journals of said houses.

Oath before whom taken and subscribed.

SECT. 81. The oath may be taken, and, except in the cases prescribed in the two next preceding sections, may be subscribed before any judge of the supreme or circuit court, clerk of the circuit court, or justice of the peace, unless otherwise directed by law.

Ib.

SECT. 82. Officers appointed by the board of county commissioners and township officers (justices of the peace and constables excepted) may take and subscribe the oath before the county auditor.

Oath when to be taken.

SECT. 83. It shall be the duty of every officer whose oath of office is required to be endorsed on his commission, or certificate of election, or appointment, to take and subscribe said oath, within ten days after the reception of his said commission, or certificate, or within ten days after the commencement of his term of office, if his commission or certificate shall have been received by him.

Certified copy of oath, where deposited.

SECT. 84. The certified copy of said oath shall be immediately deposited by the officer taking the same, as follows:

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1. All officers, whose oath is endorsed on the commission, and whose duties are not limited to and for a particular county, shall cause such certified copy to be deposited in the office of the secretary of state.

2. Officers, whose duties are confined to a particular county, and justices of the peace, and constables, shall each file the certified copy of his said oath in the clerk's office of his county.

3. Officers, appointed by the board of county commissioners, and such township officers (except justices of the peace and constables,) as the board of county commissioners may require to do so, shall deposit such certified copy with the county auditor.

Deputies to take same oath

SECT. 85. Whenever any officer is authorized or required by law to appoint a deputy, such deputy, before he shall proceed to act, shall take the same oath, and file a certified copy thereof in the same office where his principal is required to deposit his oath.

Official bonds, where to be filed.

SECT. 86. Every officer, except the secretary of state and clerks of the circuit courts, of whom an official bond is required by law, shall file such bond in the same office in which he is required to file said certified copy of his official oath.

Official bonds of secretary of state and clerks of cir. court, where filed.

SECT. 87. The official bond of the secretary of state shall be filed and recorded in the recorder's office of Marion county; and the official bonds of clerks of the circuit courts shall be filed and recorded in the recorder's office of their respective counties, and a copy shall be forwarded to the secretary of state, and by him filed in his office.

Copies where sent.

May be sent by mail.

SECT. 88. Any officer, whose duty it is to deposit a certified copy of his said oath, and file his official bond, if required by law to give such bond, in the office of the secretary of state, may transmit the same by mail to said secretary, at Indianapolis, within ten days after taking such oath.

To be safely kept and copies given, when.

SECT. 89. It shall be the duty of every officer with whom the said certified copies and said bonds shall be filed, carefully to keep and preserve the same, and give certified copies thereof, sealed with the seal of his office, to any person demanding the same, upon being paid the same fees as are allowed by law for certified copies of papers in other cases.

Surety, how approved of.

SECT. 90. The securities in the official bonds of officers shall be approved in the manner prescribed by law: and such approval shall be endorsed on every such bond, and signed and attested by the court, board, or officer, approving the same; and a certified copy of such approval shall, if required by such officer, be delivered to him.

Not to be filed until approved.

SECT. 91. No officer, with whom any official bond is required to be filed, shall file and take charge of such bond, until approved as prescribed by law.

Penalty for exercising office without oath, &c.

SECT. 92. If any person, elected or appointed to any office, or if the deputy of any officer, shall execute any of the duties of any office, without having taken and subscribed the oath of office prescribed in this article, or without having executed and

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filed in the proper office, any bond required of him by law, he shall be deemed guilty of a misdemeanor, punishable by fine not exceeding one thousand dollars, upon conviction in any court of competent jurisdiction.

Bonds to whom payable.

SECT. 93. All official bonds, required by law of officers, shall be executed and made payable to the state of Indiana, in such penalty, and with such conditions as shall be required by law.

Extent and nature of liability thereon.

SECT. 94. Every official bond, executed by any officer, pursuant to law, shall be deemed and taken to be in force, and obligatory upon the principal and sureties therein, for any and all breaches of the condition or conditions thereof, during the time such officer shall continue to discharge any of the duties of such office.

Ib.

SECT. 95. Every such bond shall be deemed to be in force, and obligatory upon the principal and sureties therein, for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, although no such condition may be expressed in such bond.

For benefit of all persons injured.

SECT. 96. Every official bond executed by any officer, pursuant to law, shall be in force and obligatory upon the principal and sureties therein, to and for the state of Indiana, and to and for the use and benefit of, and in trust for, any and all persons who may be injured or aggrieved by the misfeasance, malfeasance, nonfeasance, or default, of such officer in his official capacity.

Several recoveries may be had until penalty exhausted.

SECT. 97. Any such bond shall not be void on the first recovery of a judgment thereon, but suit or suits may be afterwards brought on said bond from time to time, in the same, or any other court of competent jurisdiction, and judgment recovered thereon, by the state of Indiana, or at the instance and on the relation of any person to whom any right of action shall have accrued against such officer and his sureties, on said bond, until the whole penalty of such bond shall be exhausted.

Bond not void, although informal or defective.

SECT. 98. Whenever any such official bond shall not contain the substantial matter or condition or conditions, required by law, or there shall be any defect in the approval or filing thereof, such bond shall not be void, so as to discharge such officer and his sureties; but they shall be equitably bound to the state, or party interested; and the state, or such party, may by action at law, instituted as other suits on official bonds, in any court of competent jurisdiction, suggest the defect of such bond, or of such approval, or filing, and recover his proper and equitable demand or damages, from such officer, and the person or persons who intended to become, and were included as sureties in such bond.

Provisions applicable to all officers.

SECT. 99. All the provisions and requirements of this article shall apply to the oath of office and official bond of any officer whose office shall be established hereafter, unless the contrary shall be expressly provided.

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SECT. 100. A copy of any such official bond, duly certified according to law, shall be received as evidence, and declared on in all courts in this state, in like manner as the original.

Certified copies of official bonds made evidence.

ARTICLE XV.

Of compelling certain officers to give additional bond and surety.

SECTION
101. Proceedings to obtain further surety from clerks, sheriffs, coroners, recorders, and justices.
102. Officer to have three days' notice.
103. Cause may be heard in his absence.
104. Proceedings, when to be dismissed at petitioner's cost.
105. New bond, when to be required.
106. New bond, penalty for failure to give.
107. Like proceedings authorized against county auditors, treasurers, assessors, school commissioners, constables, and county agent.
108. When to be dismissed at petitioners' costs.
109. New bond not filed, office to become vacant.
110. If bond is filed, no cost to be charged to officer.
111. Penalty of new bond, form of same, approval, and where filed.
112. Force and effect of new bond.
113. Original bond not to be discharged.
114. Suit may be on either or both bonds.
115. Levy only to be for amount actually due and cost.
116. Sureties may recover of each other.
117. Proceedings when a surety wishes to discharge himself from further liability.

SECTION
118. Application to be in writing, and its contents.
119. Affidavit required thereto.
120. Summons thereon.
121. Service, and return thereof.
122. Penalty of new bond and security, by whom determined and where filed.
123. Officer to give bond or resign—on failure, may be fined.
124. New bond, with summons, &c., to be filed with the former bond.
125. Sureties so applying shall be discharged when new bond is given.
126. Force and effect of new bond.
127. Sureties on former bond may be prosecuted for previous liabilities.
128. Sureties not discharged may be prosecuted for subsequent liabilties.
129. Manner of declaring in such action.
130. Discharge may be plead, but judgment shall go aganist others.
131. Suits may be brought on new and old bonds for subsequent liability.
132. Sureties may recover of each other.
133. Sureties may be discharged at any time by officer giving new bond.
134. Former bonds to remain in force as to all former liabilities.
135. Force and effect of such new bond.

SECT. 101. Whenever the surety or sureties in the official bond of any clerk, sheriff, coroner, recorder, or justice of the peace, shall remove without the state, become insolvent or insufficient, or the penalty of such bond shall become insufficient, it shall be the duty of the circuit court of the proper county, on the petition of three or more of the qualified electors of such county, verified by affidavit, and setting forth such removal, insolvency, or insufficiency, to summon any such officer to appear before said court and show cause, if any he can show, why he shall not execute an additional official bond, with good and sufficient surety or sureties.

Proceedings to obtain further security of clerk, sheriff, coroner, recorder, and justice.

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Three days' notice.

SECT. 102. Such officer shall be entitled to at least three days' notice of the time of trying the allegations contained in said petition.

Cause may be heard in his absence.

SECT. 103. Should such officer, after due notice of the pendency of such petition, fail to appear at the time appointed for the trial thereof, the same may be heard and determined in his absence.

When to be dismissed at cost of petitioners.

SECT. 104. If, upon the trial of the case, such court shall be of opinion that the surety or sureties have not removed without the state, become insolvent or insufficient, or that the penalty of such bond is sufficient, it shall dismiss said cause at the cost of the petitioners.

New bond, when to be required.

SECT. 105. If the court, upon such hearing, shall be of opinion that such surety or sureties have removed without the state, become insolvent, or are insufficient to discharge and pay the penalty of the bond, which such officer had executed, or that the penalty of such bond is insufficient, by reason of previous breaches and recovery thereon, or otherwise, such court shall require a farther bond, with such other and additional security as may be deemed necessary, to be executed and filed within such time as may be ordered by the court.

Penalty for failure to give new bond.

SECT. 106. If any such officer shall fail or refuse to file such further bond, as ordered by said circuit court, he shall be liable to a fine, or fine and imprisonment, as hereinafter provided in this article.

Like proceedings against county auditor, treasurer, assessor, school commissioner, constable, and county agent.

SECT. 107. Whenever the surety or sureties in the official bond of any county auditor, treasurer, assessor, school commissioner, constable, or county agent, shall have removed without the state, or become insolvent, or are insufficient to pay and discharge the penalty of such bond, or the penalty of such bond shall become insufficient as above specified, the same proceedings in all respects shall be instituted, and the same shall be prosecuted, heard, and tried, in like manner, before the board of county commissioners, as is provided in the preceding sections of this article, in requiring sheriffs and other officers therein named, to give additional bond before the circuit court.

When to be dismissed at cost of petitioners.

SECT. 108. If the allegations of such petition are not sustained by sufficient proof, said board shall dismiss the same, at the proper costs of the petitioners.

New bond if not filed, office to become vacant.

SECT. 109. If such officer shall be required by the said board to execute and file such further bond and security, the same shall be ordered by the board to be done, within such time as may be deemed reasonable; and if the same is not done within the time prescribed, all the authority of such officer shall immediately cease, and his office shall be deemed vacant.

If bond is filed, no costs to be charged.

SECT. 110. If any officer ruled to file bond in any of the cases specified in the preceding sections of this article, shall do so within the time required, he shall be discharged without costs; but if otherwise, he shall be liable for the costs of such petition or attachment.

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Penalty of new bond, form thereof, and by whom approved, and where filed.

SECT. 111. Such additional bond, whether filed pursuant to the order of the circuit court, or of the board of county commissioners, shall be in such penalty as such board or court may direct, and shall be in all other respects similar to the original bond of such officer, and shall be approved before, and filed with, the same officer, as required in case of the approval and filing of such original bond.

Force and effect of new bond.

SECT. 112. Every such additional bond, filed and approved as aforesaid, shall be of like force and obligation upon the principal and sureties therein, from the time of its execution, and shall subject the said officer and sureties to the same liabilities, suits, and actions, as are prescribed respecting the original official bonds of officers.

Original bond not to be discharged.

SECT. 113. In no case, provided in the preceding sections of this article, shall the original bond be discharged or effected, where additional bond has been given as herein required; but the same shall remain of like force and obligation, as if such additional bond had not been given.

Suit may be had on either or both bonds.

SECT. 114. Such officer and his sureties shall be liable to any party injured or aggrieved by any breach or breaches of any conditions of any such official bond, after the execution of such additional bond, upon either or both of said bonds; and such party may bring his action in such case upon either bond, or he may bring separate actions on said bonds respectively; and may assign the same cause or causes of action, and recover judgment therefor in each suit.

Amount actually due and cost only to be levied.

SECT. 115. If separate judgments shall be recovered on said bonds by such party for the same cause or causes of action, he shall be entitled to have executions issued on such judgments respectively; but he shall only collect by execution, or otherwise, the amount actually adjudged to him on such like cause or causes of action, in one of said suits, together with the costs of both suits.

Sureties may recover of each other.

SECT. 116. Whenever the sureties in either bond shall have been compelled to pay any sum of money on account of the principal obligor therein, they shall be entitled to recover in an action of debt, in any court of competent jurisdiction, of the sureties in the remaining bond, a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear the one to the other, and to the sums thus paid respectively.

Surety wishing to discharge himself from further liability

SECT. 117. Whenever any surety in the official bond of any county or township officer named in the preceding sections of this article, wishes to discharge himself from any subsequent liability on such bond, he shall make his application therefor before the officer with whom such bond shall have been filed.

Application to be made in writing, and contents.

SECT. 118. Such application shall be made in writing, setting forth that such applicant or applicants have reason to believe and verily fear that he or they will become liable on such bond, by reason of such suretyship, and that he or they will be without adequate remedy against such officer, in consequence of his inability to pay and discharge such liability.

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Affidavit thereto.

SECT. 119. Said affidavit shall be sworn to and subscribed before the officer with whom such application is lodged, who shall have full authority to administer the requisite oath or affirmation.

Summons thereon.

SECT. 120. Such officer shall forthwith issue and deliver to the sheriff, coroner, or any constable of the county, a summons, together with a certified copy of such application, requiring the officer therein named to appear before him, and execute a further bond, in such penalty, and with such sufficient surety or sureties as the officer issuing such summons may require and approve, within five days after the same shall have been served upon him.

Service and return thereof.

SECT. 121. Such sheriff, or other officer into whose hands such summons and certified copy shall be delivered, shall forthwith serve the same on, and deliver said copy to, the person therein named, and endorse the time of such service on said summons, and return the same immediately to the officer by whom it was issued.

Penalty of new bond, by whom approved, and where filed.

SECT. 122. The officer issuing such summons shall have full power and authority to determine the amount of the penalty, which shall be specified in such additional bond, and to approve the sureties therein named, and shall file such bond in his office, and endorse the time of approval and filing thereon.

Officer to give bond or to resign.

SECT. 123. If the officer required to give such additional bond shall fail to do so, with sufficient sureties as above prescribed, or to resign, or otherwise vacate his said office, within five days after service of said summons upon him as aforesaid, unless prevented by absolute inability, other than inability to give such additional security, he shall, upon conviction thereof, upon indictment before any court of competent jurisdiction, be fined in any sum not exceeding fifty dollars, and also ten dollars for each week he shall so fail or refuse, to which may be added imprisonment in the county jail for any length of time not exceeding three months.

For failure may be fined and imprisoned.

Bond, where filed.

SECT. 124. On the execution of such additional bond, on the application of any surety or sureties as herein provided, and its approval by the proper officer, the same shall be filed, together with said summons, written application, and affidavit, with the original bond of such officer.

Applicants to be discharged from further liability when new bond is given.

SECT. 125. Upon the execution and approval of such additional bond by the proper officer, such applicant or applicants shall be exonerated as such sureties on such original bond, from all liability for any breach of any condition therein contained, subsequent to the execution of such additional bond.

Force and effect of new bond.

SECT. 126. Every such additional bond, filed and approved as herein provided, on the application of any such surety or sureties, shall be of like force and obligation on the sureties therein, from the time of its execution, and shall subject the said officer and sureties to the same liabilities, suits, and actions, as are prescribed respecting the original official bond of every such officer.

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SECT. 127. Such exoneration of any one or more of the obligors in such original bond from all subsequent liability therein, shall not affect or discharge the previous liability of any of the obligors who shall have executed such bond; but they shall all be liable to any person or party injured, for any breach or breaches of the conditions thereof by such officer, previous to the execution of such additional bond. Former bond may be prosecuted for previous liabilities

SECT. 128. Such exoneration of any one or more of the obligors in the original bond of any such officer shall not discharge any remaining obligor or obligors, who shall not have joined in such application, from any liability which shall have accrued subsequent to the approval of such additional bond. May be prosecuted for subsequent liabilities against those not applying for discharge.

SECT. 129. In declaring on the original bond, in any action at law which may have accrued subsequent to such exoneration, it shall be sufficient to declare only against such obligor or obligors as shall not have been exonerated by alleging such exoneration. Form of declaration in such action.

SECT. 130. All the obligors in such original bond may be declared against in any such action; in which case, such exonerated obligor or obligors may plead such exoneration in bar of such suit; and on such plea being sustained on demurrer or otherwise, it shall not operate as a discharge of any obligor or obligors not included in such plea; but judgment shall be given and rendered for the plaintiff against such remaining obligor or obligors, as though the defendant or defendants pleading such plea had not been joined in such suit. Discharge may be pleaded, but judgment shall go against others.

SECT. 131. Such officer and his sureties in such additional bond, and the sureties in the original bond who shall not have been exonerated, according to the provisions of this article, shall be liable to any party injured or aggrieved by the breach or breaches of any condition of any such official bond, after the execution of the aforesaid additional bond, upon either or both of said bonds; and suits may be brought thereon against such sureties and judgments recovered, and satisfaction thereof made, according to the provisions of the one hundred and fourteenth and one hundred and fifteenth sections of this chapter. Suits may be brought for subsequent liability on new and old bonds.

SECT. 132. Whenever the sureties in either bond shall have been compelled to pay any sum of money on account of the principal obligor therein, they shall be entitled to the same remedy against the sureties in the remaining bond, which are allowed to sureties by the provisions of the one hundred and sixteenth section of this chapter. Sureties may recover of each other.

SECT. 133. Whenever any sureties wish to be discharged from remaining as such, for any state or county officer, executor or administrator, they and such officer may procure the same to be done, if such officer will file a new bond, with sufficient sureties, in like form and penalty, and with like conditions as the original bond of such officer, to be approved and filed as such original bond. Sureties may be discharged by officer filing new bond.

SECT. 134. Upon the filing and approval of such new bond, such first sureties shall be exonerated from all further liability Former bond to remain in force as to

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former liabilities.

accruing thereafter; but their bond shall remain in full force as to all liabilities incurred previous to the approval of such new bond.

Force and effect of new bond.

SECT. 135. The liability of the sureties in such respective bonds shall in all respects be the same, and may be enforced in like manner, as in the case of officers who have been compelled to give a new bond by the provisions of this article, so far as the same are applicable.

ARTICLE XVI.

Of offices becoming vacant by resignation or otherwise, and giving notice thereof.

SECTION

136. What shall vacate an office.
137. Resignation of governor and lieutenant governor, where transmitted.
138. Members of general assembly and commissioned officers, except justices, shall resign to governor.
139. Justices and other officers, to whom.
140. Clerk and sheriff of supreme court, to whom.
141. All other officers, to whom.
142. Vacancies, how certified to governor.

SECTION

143. Same, when otherwise than by resignation.
144. Clerk resigning, to notify associate judges.
145. Vacancy of clerkship certified to governor by associate judges, when.
146. Vacancies, when to be certified to county commissioners by auditor.
147. Vacancies occasioned by impeachment, how certified.
148. Governor, when to certify vacancies to general assembly.

What shall vacate an office.

SECT. 136. Every office shall become vacant upon the happening of either of the following events, at any time before the expiration of the term of such office, to-wit:

1. The resignation or death of the incumbent.
2. His removal from office.
3. His refusal or neglect to take the oath of office, and also to give bond, when such bond is necessary, as prescribed by law.
4. His ceasing to be a resident of the state, district, county, township, or town, in which the duties of his office are to be exercised, or for which he shall have been elected.
5. The decision of a competent tribunal, declaring his election or appointment void, or his office vacant.
6. A failure to elect at the proper election, and there is no provision for the incumbent to continue in office until a successor is chosen and qualified.

Resignation of governor and lieutenant governor, where transmitted.

SECT. 137. The governor and lieutenant governor shall transmit their resignations to the legislature, if in session; or if not, then to the secretary of state.

Members of general assembly and commissioned officers, except justices, how to resign.

SECT. 138. Members of the general assembly, and also all officers commissioned by the governor, except justices of the peace, when they resign their offices, shall resign to the governor.

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Justices and other officers, how to resign.

SECT. 139. Justices of the peace, and also all officers who receive certificates of their election from the clerk of the circuit court, shall deliver their resignations to such clerk; and officers who receive certificates of their election from the county auditor, or board of judges of any election, shall deliver their resignation to such auditor.

Clerk and sheriff of supreme court.

SECT. 140. The clerk and sheriff of the supreme court may deliver their resignations to any judge of said court.

All other officers.

SECT. 141. All other officers shall deliver their resignations to the officer, board, or court, from whom they may have received their appointment.

Vacancies, how to be certified to the governor.

SECT. 142. Whenever a vacancy shall occur in any office in the manner specified in the first section of this article, (except cases of resignation made to the governor,) in which it is the duty of the governor to issue a writ of election, or make an appointment to fill such vacancy, it shall be the duty of the clerk of the circuit court of the county where such officer exercised the duties of his office, if confined to a single county, and if not thus confined, then of the clerk of the county where such officer last resided previous to the happening of such vacancy, to certify such vacancy, and how it occurred, to the governor.

Same.

SECT. 143. But when a vacancy, otherwise than by resignation, shall happen in the office of a member of the general assembly, during the session thereof, such vacancy shall be notified to the governor by the presiding officer of the house in which such vacancy shall have occurred.

Clerk of circuit court resigning, to notify associate judges.

SECT. 144. Whenever the clerk of any circuit court shall resign his office, he shall give notice thereof to the associate judges of his county, at the same time that he shall transmit his resignation to the governor.

Associate judges to certify vacancy in clerkship to governor.

SECT. 145. Whenever a vacancy shall happen in the office of clerk of the circuit court, otherwise than by his resignation, the associate judges of the county where such vacancy shall have happened shall certify the same under their hands to the governor.

Vacancies, when to be certified by county auditor.

SECT. 146. Vacancies in any office filled permanently or *pro tempore* by appointment of the board of county commissioners, shall be certified to such board by the county auditor.

Vacancies occasioned by impeachment, how certified.

SECT. 147. Whenever any officer shall be removed from office on impeachment and conviction, as declared in the constitution of this state, it shall be the duty of the secretary of the senate to transmit a certified notice thereof to the officer, court, or person, as the case may be, whose duty it shall be to order an election or to make an appointment to supply the vacancy caused by the removal of such officer from office.

Governor, when to certify vacancies to general assembly.

SECT. 148. It shall be the duty of the governor to certify to the general assembly, at the earliest day practicable, all cases of vacancies in offices which are to be supplied by such general assembly, together with a statement of such *pro tempore* appointments, as shall have been made by the governor since the preceding session.

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ARTICLE XVII.

Of supplying vacancies in office.

SECTION
149. In case of governor.
150. In case of lieutenant governor exercising the duties of governor.
151. Senate, when to elect president pro tempore.
152. When secretary of state shall convene senate to elect president pro tempore.
153. What vacancies may be supplied by an appointment pro tempore.
154. What appointments shall end with the ensuing session of general assembly.
155. In case of sheriff, coroner, probate judge, and recorder, governor shall appoint.
156. In case of clerk, circuit court shall appoint.
157. How made in vacation.
158. When by president judge alone.
159. In case of county commissioner, circuit court shall appoint.
160. In case of county auditor, treasurer, assessor, school commissioner, county agent, and all township officers, county commissioners shall appoint.
161. Vacancies occurring pending an election, how filled.
162. Officer so appointed to give like bond and take like oath.—His rights and duties.
163. When appointment shall continue until the newly elected officer is ready to serve.
164. Vacancies in general assembly and associate judges only filled by election.
165. Elections to supply vacancies how held.
166. Elections for vacancies held by general assembly.
167. When to hold for residue of predecessors' term.
168. When to hold for the full term.
169. Same.

In case of governor. Const. art. 4, sect. 17.

SECT. 149. Whenever a vacancy happens in the office of governor, by reason of his impeachment, removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant governor exercises the powers and authority appertaining to the office of governor, until another is duly qualified, or the governor, absent or impeached, returns to the state or is acquitted.

In case of lieutenant governor exercising duties of governor.—Const. art. 4, sect. 18.

SECT. 150. If, during the vacancy of the office of governor, the lieutenant governor shall be impeached, removed from office, refuse to qualify, or shall resign, die, or be absent from the state, the president of the senate, *pro tem.*, in like manner administers the government, until he is superseded by a governor or lieutenant governor.

Senate, when to elect a president pro tempore. Const., art. 4, sect. 18.

SECT. 151. Whenever the government is administered by the lieutenant governor, or he shall be unable to attend as president of the senate, the senate elects one of its own members as president for that occasion.

When secretary of state shall convene senate to elect president pro tem. Const., art. 4, sect. 20.

SECT. 152. If the lieutenant governor is called upon to administer the government, and while in such administration, resigns, dies, or is absent from the state during the recess of the general assembly, it becomes the duty of the secretary of state for the time being, to convene the senate for the purpose of choosing a president *pro tempore*.

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Of appointment pro tempore.

SECT. 153. Whenever a vacancy shall happen in any office, the appointment or election to which is vested in the governor by and with the advice and consent of the senate; in the general assembly; or in the qualified electors of any district, county, or township, such vacancy may be supplied by an appointment *pro tempore*, in the manner provided in this article; except the offices of governor, members of the general assembly, associate judges, and justices of the peace. What vacancies may be supplied by an appointment pro tempore.

SECT. 154. Vacancies that may happen in offices, the appointment of which is vested in the governor and senate, or in the general assembly, are filled by the governor, during the recess of the general assembly, by granting commissions that shall expire at the end of the next session. What appointments to end with the ensuing session of general assembly. Const., art. 4, sect. 9.

SECT. 155. Whenever any vacancy shall occur in the offices of sheriff, coroner, probate judge, or recorder, the governor shall appoint some eligible person to fill such vacancy and exercise the duties of such office. In case of sheriff, coroner, probate judge, and recorder, governor shall appoint.

SECT. 156. Whenever there is a vacancy in the office of clerk of the circuit court, such court has the power to appoint a clerk *pro tempore*, until a qualified clerk may be duly elected. In case of clerk of circuit court, court is to appoint. Const., art. 5, sect. 8.

SECT. 157. If such vacancy shall happen in vacation, the judges of said court, or a majority of them, shall meet as soon as practicable thereafter, and appoint some suitable person to fill such office until a clerk shall be duly elected and qualified. How made in vacation.

SECT. 158. If there shall be but one associate judge of the county qualified to act, or if the associate judges, in the absence of the president judge, shall fail to make such appointment within a reasonable time, such president judge alone shall make said appointment. When, by the president judge alone.

SECT. 159. Whenever a vacancy shall occur in the office of county commissioner, the circuit court of the proper county, or the associate judges thereof in vacation, shall appoint a suitable person to fill such vacancy. In case of county commissioner, circuit court shall appoint.

SECT. 160. Whenever any vacancy shall occur in the office of county auditor, county treasurer, county assessor, school commissioner, county agent, pound keeper, constables, inspectors of elections, supervisors of roads and highways, or overseers of the poor, by a failure to elect, resignation, or otherwise, it shall be the duty of the board of county commissioners to fill the vacant office or offices by appointment. In case of county auditor, treasurer, assessor, school commissioner, county agent, and township officers, county commissioners to appoint.

SECT. 161. If, during the pendency of any contested election, a vacancy shall occur in the office which was to have been filled at such election, and the public interests should require such vacancy to be supplied, it shall be the duty of the proper officer, court, or board of county commissioners, in whom the power is vested by the constitution or by law, to make such appointment, upon being notified of such vacancy and the reasons of it, by the officer, court, or authority, whose duty it is to give Vacancy occurring pending an election, how filled.

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notice of vacancies in such office, to appoint some eligible person to fill said vacancy until such contest is decided, and until an officer duly elected, shall qualify and enter upon the duties of such office.

Officer so appointed to give like bond and take like oath. —His rights and duties.

SECT. 162. Any person appointed to supply a vacancy in any office, *pro tempore*, shall take the same oath of office, and execute the proper official bond, if a bond is necessary, which are required of the officer in whose place he shall be appointed; and he shall possess the same rights, powers, authority, and privileges, and be subject to the same duties, obligations, penalties, and liabilities, which shall be possessed by, or imposed upon, any officer by law, whose place he may supply.

When appointment shall continue until the newly elected officer is ready to serve.

SECT. 163. Whenever any appointment, *pro tempore*, shall be made to supply a vacancy, in any office which it is proper to fill at any general, special, or township election, such appointment shall continue until such election shall have been held, and until an officer duly elected and qualified, shall enter upon the duties of such office.

Of supplying vacancies by election or permanent appointment, and the tenure of office of those thus elected or appointed.

Vacancies in general assembly and associate judges only filled by election.

SECT. 164. A vacancy in the offices of members of the general assembly and associate judges, can only be supplied at a general or special election.

Elections to supply vacancies, how held.

SECT. 165. Elections to fill any office which shall have become vacant, except elections which are vested in the general assembly, shall be held as provided in the next chapter.

Elections therefor by general assembly.

SECT. 166. Elections by the general assembly to fill any vacancy, are held whenever the general assembly shall be in session after the happening of such vacancy.

When to hold for residue of predecessors' term.

SECT. 167. Whenever any person is appointed or elected to any of the offices specified in this section to fill a vacancy therein, except appointments *pro tempore*, such person so appointed or elected shall hold such office for the period his predecessor had to serve, and no longer, to-wit:

1. Appointments by the governor, by and with the advice and consent of the senate, to supply any vacancy in the office of supreme judge.

2. Persons elected by the general assembly to supply a vacancy in the office of president judge.

3. Elected at a general or special election to supply a vacancy in the office of senator or representative in the general assembly.

4. Elected at any general or special election to supply any vacancy in the office of associate judge or of clerk of the circuit court.

5. Appointed to fill a vacancy in the office of clerk of the supreme court.

When to hold for full term.

SECT. 168. Every person elected to any office in which a vacancy has occurred, except the offices specified in the last preceding section, shall hold such office for and during the full

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term thereof, without regard to the unexpired portion of the term for which his predecessor may have been elected.

When to hold for full term.

SECT. 169. Whenever a vacancy shall occur in any office, and the sole power of appointing the officer to fill such office is exclusively vested in the governor, or in any court, judge or judges thereof, or in any board of county commissioners—excepting, from the provisions of this section, the appointment of clerk of the supreme court—the person appointed to fill such vacancy shall hold such office for and during the full term thereof, in like manner as provided in the last preceding section.

CHAPTER 5.

OF GENERAL AND SPECIAL ELECTIONS.

ARTICLE 1. Of general and special elections, and the time and object of holding them.
ARTICLE 2. Of the qualifications and disabilities of electors.
ARTICLE 3. Of the place of holding elections, and also of inspectors, judges, and clerks of elections, and the poll books, and ballot boxes.
ARTICLE 4. Of opening the election, of voting, and challenges.
ARTICLE 5. Of counting the votes, returning and canvassing the same, declaring and certifying who are elected, or who have received the highest number of votes, as the case may require, to the clerks of the circuit courts, and of preserving certificates, poll books, and tally papers.
ARTICLE 6. Of the duties of clerks of the circuit courts after the election returns have been made, of granting certificates of election to certain county officers, the mode of certifying elections when more than one county composes an election district, and of returning to the secretary of state and canvassing the votes for governor and lieutenant governor.
ARTICLE 7. Of the election of township officers, except justices of the peace, and supplying vacancies therein.
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ARTICLE 9. Of contesting elections, other than for members of the general assembly, and governor and lieutenant governor.
ARTICLE 10. Of contesting elections for members of the general assembly.
ARTICLE 11. Of contesting the election of governor and lieutenant governor.
ARTICLE 12. Of electors of president and vice president of the United States.
ARTICLE 13. Of the compensation of certain officers and persons, in relation to elections.
ARTICLE 14. Of the penalties for misconduct at elections, and for violations of certain provisions of this chapter.

ARTICLE I.

Of general and special elections, and the time and object of holding them.

SECTION 1. General elections uniform, and for what officers.
SECTION 2. Special elections.

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SECTION
3. General elections, when held, special elections, when held.
4. Vacancies about to occur, at what general election to be supplied.
5. Casual vacancies occurring 20 days before a general election.
6. Such vacancies occurring within 20 days of a general election.
7. Clerk shall certify offices to be filled, to sheriff, when.
8. Notice to be given thereof by sheriff.
9. Special elections, in what cases to be held.
SECTION
10. Same to be ordered by governor, and how.
11. Time of election, when to be specified in writ, when to be determined by sheriff.
12. Notice to be given by sheriff of such election to the inspectors, and to the public.
13. Manner of conducting special elections.

General elections uniform, for what officers.

SECTION 1. General elections are such as are held at the same time in each county in the state, for the election of all, or a part, of the following officers, to-wit: Governor, lieutenant governor, members of the general assembly, representatives in congress, sheriffs, coroners, associate judges and clerks of the circuit court, judges of the probate courts, county commissioners, recorders, auditors, treasurers, assessors, and school commissioners, of the respective counties; and also, for the election of electors of president and vice president of the United States.

Special elections.

SECT. 2. Special elections are such as are held only in a particular district or county, at a time when no general election is held, for the purpose of electing one or more of the officers proper to be chosen at a general election.

General elections, when held. Special, when.

SECT. 3. General elections, except for electors of president and vice president of the United States, shall be held on the first Monday of August in every year: special elections shall be held at the times and places of which legal notice shall be given.

Vacancies about to occur, at what general election to be supplied.

SECT. 4. All vacancies which are about to occur in offices, by the expiration of the full term thereof, proper to be supplied at a general election, shall be supplied at the general election next preceding the happening of such vacancies.

Casual vacancies occurring 20 days before general election.

SECT. 5. All vacancies which shall happen in any office, otherwise than by the expiration of the full term thereof, at any time before twenty days previous to any general election, and which shall not have been filled at a special election, shall be supplied at the general election next succeeding such vacancy.

Such vacancies occurring within 20 days of a general election.

SECT. 6. Any vacancies which shall occur within twenty days next preceding any general election, otherwise than by the expiration of the full term of the office, shall be supplied at the general election next succeeding said first mentioned general election, unless the same shall have been supplied at a special election.

Clerk to certify the offices to be filled, to sheriff, when.

SECT. 7. It shall be the duty of the clerk of the circuit court of each county, at least twenty days before any general election, to certify to the sheriff of his county, the number and description of all the offices to be filled at such election.

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SECT. 8. It shall be the duty of the sheriff to give fifteen days' notice thereof, by setting up at each usual place of holding elections in the several townships of his county, a copy of the said certificate of the clerk of the circuit court, and by inserting the same in some public newspaper published in the county, if any be published therein. Notice to be given thereof by sheriff.

SECT. 9. Special elections shall be held in the following cases, to-wit: Special elections, in what cases to be held.

1. Whenever a vacancy shall occur in the office of senator or representative in the general assembly, by reason whereof any district or county shall be deprived of its full representation, when the legislature shall be in session.

2. Whenever a vacancy shall occur in the office of representative in congress, by which the state shall be deprived of its full representation, at any time congress may happen to be in session, prior to the next general election.

3. Whenever two or more persons receiving votes at a general or special election, for representative in congress, senator or representative in the general assembly, or for any county office, shall have the highest and an equal number of votes for the same office.

4. Whenever a vacancy shall occur in the office of associate judge.

5. Whenever a special election shall not have taken place, as required by law, or whenever any of the offices specified in the last preceding section shall not have been filled at the proper general election.

SECT. 10. All special elections provided for in this article, shall be ordered by the governor, who shall issue a writ or writs of election, directed to the sheriff or sheriffs of the proper county or counties in which such election is required to be held; and all writs of election shall specify the district or county in which such election is to be held, the cause and object of such election, and the name of the person in whose office the vacancy has occurred; and, in all cases in which a special election is ordered, in a district composed of two or more counties, such election shall be directed to be held on the same day in each county. To be ordered by the governor and manner thereof.

SECT. 11. When a special election is necessary to elect a representative in congress, or a member to either branch of the general assembly, the writ of election shall specify the day on which the election is to be held: when a special election is ordered to fill a vacancy in the office of associate judge, or in any county office, occasioned by two or more persons having an equal and the highest number of votes for such office, the sheriff to whom such writ of election may be directed, shall determine the time of holding such election, giving not less, however, than twenty days' notice thereof. Time of election, when to be specified in writ, when to be determined by the sheriff.

SECT. 12. Whenever the sheriff of any county shall receive a writ of election, directed to him by the governor, requiring a special election to be held to supply a vacancy in any of the Notice to be given by sheriff of such election to the in-

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spectors, and to the public.

offices specified in this article, such sheriff shall immediately give notice of the time, place, and object of said election, in writing, to the inspectors of elections for each township in his county; and shall set up a written or printed notice thereof, at one of the most public places in each township; and he shall also cause a similar notice to be published in some public newspaper in his county, if there shall be any such newspaper published therein.

Manner of conducting special elections.

SECT. 13. Special elections, the returns thereof, and issuing commissions and certificates of election to the persons elected, shall in all other respects be conducted and governed in the same manner as general elections.

ARTICLE II.

Of the qualifications and disabilities of electors.

SECTION	SECTION
14. Who entitled to vote.	16. Persons convict of crime not to vote
15. Temporary absence not to exclude.	17. What crimes shall exclude.

Who shall vote. Constitution, art. 6, sect. 1.

SECT. 14. In all elections not otherwise provided for in the constitution of this state, every white male citizen of the United States, of the age of twenty-one years and upwards, who has resided in the state one year immediately preceding such election, is entitled to vote in the county where he resides; except such as are enlisted in the armies of the United States or their allies.

Temporary absence not to exclude. Const., art. 6, sect. 5.

SECT. 15. Nothing in the preceding section shall be so construed as to exclude persons otherwise entitled to vote, who have been absent from home, on a visit or necessary business, from the privilege of electors.

Persons convict of crime not to vote. Constitution, art. 6, sect. 4.

SECT. 16. No person who has been duly convicted of an infamous crime at any time previous to an election, shall be permitted to vote thereat, unless such conviction shall have been reversed by a court of competent jurisdiction, or unless such person shall have been pardoned by the governor, and by the express terms, or legal operation of such pardon, restored to all the rights and privileges of an elector.

What crimes shall exclude.

SECT. 17. A crime shall be deemed infamous, so as to exclude any person convicted thereof from voting, during the time the judgment on such conviction shall remain in force, when such crime is declared by law to be infamous, or when it shall form a part of the punishment of such crime, that the person convicted thereof shall be disfranchised for life, or some determinate period.

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ARTICLE III.

Of the place of holding elections, and also of inspectors, judges, and clerks of elections, and the poll books and ballot boxes.

SECTION
18. Place, how designated, and when more than one are allowed in a township.
19. Inspectors of election not attending, others how appointed.
20. Inspectors to select two judges and two clerks of election.
21. Oath required of inspector and judges.
22. Oath, who may administer.
23. Oath required of clerks—same and all other oaths necessary may be administered by inspector.
24. Inspector may supply vacancies in board of judges or clerks.
25. Forms of poll books, &c. to be furnished to inspectors.
26. Ballot boxes also to be furnished.
27. Locks thereto to be provided—manner of keeping same during election.
28. An opening therein for reception of ballots.

Place, how designated, and when more than one allowed in a township.

SECT. 18. There shall be a place of holding elections in each township, designated by the board of county commissioners; but the board may, if the convenience of the people require it, order an additional place of holding elections in any township in which the number of votes polled usually exceeds eight hundred.

Inspectors of election not attending, others may be appointed.

SECT. 19. It shall be the duty of each inspector of elections to be and appear at the place of holding elections in his township, at or before eight o'clock in the morning of the day of election; and should such inspector not appear at that hour, then the qualified electors of the township, who may be present, shall appoint an inspector of the election about to be opened; and the inspector thus appointed shall be governed in all things touching said election as is herein required of inspectors duly elected according to law.

Inspector to select two judges and two clerks.

SECT. 20. Each inspector of elections shall, previously to the time of opening the election, select two qualified voters of his township, who, with himself, shall constitute a board of judges of said election; and said inspector also shall appoint two suitable persons as clerks of such election.

Oath to be taken by inspector and judges.

SECT. 21. Before any election shall be opened, the inspector and judges shall each take an oath to support the constitution of the United States and of the state of Indiana; and also that he will faithfully and impartially discharge the duties assigned him by law; and that he will not knowingly permit any person to vote who is not qualified according to the provisions of the constitution of this state, and that he will not knowingly refuse the vote of any qualified elector, or cause any delay to persons offering to vote, further than is necessary to procure satisfactory information of the qualifications of such person as an elector.

Oath, who may administer.

SECT. 22. If no person present is authorized by law to administer the oath of office, the inspector shall administer the same to the judges, and one of said judges shall then administer said oath to the inspector.

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Oath to be taken by clerks; inspector may administer same and all others necessary.

SECT. 23. Said inspector, in right of his office, shall be chairman of said board; and shall, before the reception of any votes, administer an oath to each of the clerks of the election, that they will truly and faithfully discharge their duties as such clerks. After the organization of the board of judges, the inspector shall have power to administer all necessary oaths which may be required in the discharge of their duties.

Inspector may supply vacancies in board of judges or clerks.

SECT. 24. Said inspector shall also have power to fill any vacancy that may occur in the board of judges, or by absence or refusal to serve of either of the clerks, at any time after the election shall have been opened.

Election forms to be prepared and furnished inspectors.

SECT. 25. The board of county commissioners, in each county, at their first meeting in every year, shall cause a suitable number of blank forms of poll books, containing one column headed, "names of voters," and an additional column headed, "number of votes;" and also forms of election returns, with the proper captions, and forms of certificates to be made out for each inspector of elections in the several townships, and shall cause the same to be delivered by the sheriff to the several inspectors, at least ten days previous to the next election.

Also ballot boxes.

SECT. 26. The board of county commissioners shall also provide a sufficient number of ballot boxes, at the expense of the county, for the several inspectors, to be kept by them, and delivered over to their successors in office.

Locks thereto provided—manner of keeping same during election.

SECT. 27. Each box shall be provided with a sufficient lock, and shall be locked before the opening of the election, and the key delivered to one of the judges, selected by the inspector, and the box shall not be opened during the election, except in the manner and for the purposes hereinafter provided.

Opening therein for ballots.

SECT. 28. An opening shall be made in the lid of each box, not larger than shall be sufficient for a single closed ballot to be inserted therein, at one time; through which each ballot received, proper to be placed in such box, shall be inserted.

ARTICLE IV.

Of opening the election; of voting; and challenges.

SECTION

29. Polls, when to be opened and closed.
30. Proclamation to be made.
31. Ballots, how to be made.
32. Manner of receiving votes.
33. Names to be entered by clerks, and numbered.
34. Who may challenge.
35. Proceedings on challenge being made.

SECTION

36. Same subject.
37. Same subject.
38. Challenge on account of conviction for crime to be proved only by record, except as to identity.
39. Polls, when closed, proclamation to be made.

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SECT. 29. All elections shall be opened in the forenoon, between the hours of eight and eleven o'clock of the day of the election, and continue open until four o'clock of the afternoon of said day; after which hour the board of judges may close the election, at any time, when all the electors present have voted, or have had an opportunity of voting, or when fifteen minutes have passed without a vote having been given; but the polls shall, in no case, be kept open after six o'clock of the afternoon. Polls, when to be opened and closed.

SECT. 30. The board of judges, before they commence receiving ballots, shall cause it to be proclaimed aloud, at the place of voting, that the election is opened. Proclamation to be made.

SECT. 31. The ballot shall be a paper ticket, which shall contain, written or printed, or partly written and partly printed, the names of the persons for whom the elector intends to vote; and shall designate the office to which each person so named is intended by him to be chosen. Ballots, how made.

SECT. 32. When any person offers to vote, the inspector shall pronounce his name in an audible voice, and if there be no objection to the qualifications of such person as an elector, shall receive his ballot; and in the presence of the other judges, put the same, without being opened or examined, into the ballot box, when the name of such elector shall be again distinctly repeated, by one of the other judges, in the presence of the clerks of said election. Manner of receiving votes.

SECT. 33. The name of each elector, whose ballot has been thus received, shall be immediately entered by each clerk in the column of his poll list headed, "names of voters," numbering each name, in the additional column, as it is taken down, so that it may be seen at any time whether the lists agree. Names to be entered by clerks.

SECT. 34. Any person offering to vote may be challenged as unqualified, by the inspector, or either of the judges, or by any other legal voter entitled to vote at the same poll; and it shall, in all cases, be the duty of the inspector and each judge to challenge any person offering to vote whom he shall know or suspect not to be duly qualified as an elector. Who may challenge.

SECT. 35. When any person offering to vote is challenged as unqualified by any of the persons specified in the last section, it shall be the duty of the board of judges to declare to him the qualifications of an elector. Proceedings on challenge being made. *Carter* v. *Harrison and another*, 5 Bl'kf. 138.

SECT. 36. If such person shall still insist that he is entitled to vote, and the challenge shall not be withdrawn, the board of judges, in their discretion, may administer an oath or affirmation to any bystander, competent to be sworn as a witness in any court of justice, to testify touching the qualifications of such person as an elector, or they may, at any time during such investigation, tender the following oath to the individual himself, whose vote is challenged: Same.

You do swear (or affirm) that you are a citizen of the United States; that you are over the age of twenty-one years, according to the best of your information and belief; that you have re- Oath.

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sided in this state one year immediately preceding this election; that you are at this time a resident of this county; that you are generally known by the name in which you now ask to vote; and that you have not voted at any other poll at this election.

Part of oath may be omitted, when.

SECT. 37. The board of judges may omit any part of the oath aforesaid, when it is obvious or known to them that such part may be properly or safely omitted; and if the person thus challenged shall take the oath as tendered to him by the board of judges, he shall be admitted to vote, and it shall not be lawful, after he has taken such oath, for said board to examine any witnesses touching his want of qualifications; but if he shall refuse to take the oath, so tendered to him, his vote shall be rejected.

Oath taken, no witnesses shall be examined.

Challenge on account of conviction for crime only to be proved by record, &c.

SECT. 38. If the vote of any person be challenged on the ground that he has been convicted of an infamous crime, or disfranchised by any court of competent jurisdiction, he shall not be required to answer any questions respecting such alleged conviction; nor shall any proof thereof be received other than the record, or a duly authenticated copy thereof, except such proof as may be necessary to establish his identity with the person named in such record, or may be adduced by him to rebut the evidence of identity produced on behalf of the challenge.

When closed, proclamation to be made.

SECT. 39. When the polls are closed, proclamation thereof shall be made at the place of voting, and no votes shall be afterwards received.

ARTICLE V.

Of counting the votes; returning and canvassing the same; declaring and certifying who are elected, or who have received the highest number of votes, as the case may require, to the clerks of the circuit courts; and of preserving certificates, poll books, and tally papers.

SECTION
40. Time and manner of counting ballots.
41. Of rejecting double tickets and parts of tickets.
42. Judges and clerks when not to vote —when not to publish statement of count.
43. Board may adjourn before completing count, when.
44. Poll lists and tally papers, where placed, and manner of keeping box until count is completed.
45. Certificate of result.—Same, tally papers, &c., deposited with inspector or judge.

SECTION
46. Board of canvassers, time and place of meeting, and duty.
47. Chairman and clerk of such board.
48. Manner of performing duties of the board.—Papers where filed.
49. Who to be declared elected, and certificate thereof.
50. In case of a tie, how to proceed.
51. Returns not to be set aside for want of form.
52. Certificates, tally papers, &c., how long to be preserved, and by whom.

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SECT. 40. When the polls are closed, or at any time after four o'clock of the afternoon on the day of the election, when the judges are at leisure, they may open the ballot box and commence counting the votes; when the ballots shall be taken out carefully, one by one, by the inspector, who shall open them as he takes them out, and read aloud the name of each person printed or written thereon, and the office for which every such person is voted for; he shall then hand the ballot to one of the judges who shall repeat the same, and hand it to the other judge, who shall string it on a thread of twine provided for that purpose. Time and manner of counting ballots.

SECT. 41. If two tickets are found deceitfully folded together, they shall both be rejected; and if more persons are designated on any ticket to any office than are to be elected to such office, such part of the ticket shall not be counted to any of them; but no ticket shall be lost for want of form, if the board of judges holding the election can determine, to their satisfaction, the person voted for and the office intended. Of rejecting double tickets and parts of tickets.

SECT. 42. No clerk or judge of any election shall vote after commencing to count the votes; nor publish any statement of the result of their counting, until it is proclaimed by order of the board of judges, that the election is closed. Clerks and judges when not to vote.—When not to publish statement of count.

SECT. 43. As soon as the election shall have been closed, or at any stage of the counting thereafter, the board of judges may adjourn to a convenient hour of the next day, at which time they shall proceed to complete the counting. When board may adjourn.

SECT. 44. At such adjournment the poll lists and tally papers shall be placed in the ballot box with the ballots; the box shall then be locked, and the seal of one or more of the judges so placed thereon, as to cover entirely the opening in the lid; the key shall then be delivered to one of the judges, and the box to the inspector, to be kept by them respectively, without opening the box, until the time shall have arrived for resuming the counting, and the board of judges shall have reassembled. Poll lists and tally papers, where placed and manner of keeping box until counting is completed.

SECT. 45. As soon as all the votes shall be read off and counted, the board of judges shall make out a certificate, under their hands, stating the number of votes each person voted for has received, and designating the office for which he was voted to fill; which number shall be written in words at full length; and the said certificate, together with the list of voters contained in the poll book kept by one of the clerks, and one of said tally papers, shall be deposited with the inspector; or, in case of his inability to serve further, then with one of the said judges, selected by the board of judges of said election. Certificate of the result to be made, and the same and tally papers, &c., deposited with inspector or judge.

SECT. 46. The inspector of each township, or judge of the said election, to whom said certificate, poll book, and tally paper shall have been delivered, as provided in the last preceding section, shall constitute a board of canvassers, whose duty it shall be to canvass and estimate the certificates, poll lists, and tally papers returned by each member of said board of canvassers; for which purpose they shall assemble at the court house, or Board of canvassers, time and place of meeting and duty.

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usual place of holding courts in the county, on the Wednesday next succeeding the day of such election, between the hours of twelve at noon and four o'clock of the afternoon of said day.

Manner of selecting chairman and clerk.

SECT. 47. The members of said board of canvassers who shall assemble at the time and place specified in the last section, shall select one of their number as chairman, and the clerk of the circuit court of the county shall, *ex officio*, act as clerk of said board.

Manner of proceeding.—Papers, where filed.

SECT. 48. When said board shall be organized, the members thereof shall produce the said papers deposited with them as aforesaid, relating to such election, and the same shall be carefully compared and examined; and the board shall proceed to estimate from them the vote of the county; a statement of which shall be drawn up by said clerk, and shall contain, as required in this and the next two succeeding sections, the names of the persons voted for, the office for which each person was voted to fill, the number of votes given in each township to each of such persons, the number of votes given to each in the county, and also the aggregate number of votes given altogether, as ascertained from the poll books; which statement shall be signed by each member of said board of canvassers, and, with said certificates, poll books, and tally papers, shall be forthwith delivered to said clerk, and by him filed and kept in his office.

Who to be declared elected, and certificate thereof.

SECT. 49. The person having the highest number of votes given for each office to be filled by the votes of a single county, shall be declared, by the board of canvassers, duly elected to such offices; and it shall be so certified by the said board in the above required statement.

In case of a tie, how to proceed.

SECT. 50. If two or more persons shall have the highest and an equal number of votes for a single office to be filled by the votes of a single county, the board of canvassers shall forthwith declare that no person is duly elected to fill such office, and shall certify the same as a part of the above required statement, and upon its being filed with the clerk, he shall certify the fact to the officer or tribunal whose duty it is to supply vacancies in such office by appointment, or to issue a writ of election to fill the same, as the case may require.

Returns not to be set aside for want of form.

SECT. 51. No tally paper, poll book, or certificate, returned from any election by the board of judges thereof, shall be set aside or rejected for want of form, nor on account of its not being strictly in accordance with the directions herein contained, if the same can be satisfactorily understood.

Papers, how long to be preserved and by whom.

SECT. 52. The certificates, poll books, and tally papers, forwarded to the board of canvassers, shall be preserved by said clerk of the circuit court, open to the inspection of any legal voter of the county or district who may wish to examine the same. The other papers and ballots shall be preserved and kept by the respective inspectors for the term of six months, for the examination of any of the legal voters of the county or district who may wish to inspect the same, except when such

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election is contested when they shall be preserved, subject to the order of any court trying such contest, until the same is finally determined.

ARTICLE VI.

Of the duties of clerks of the circuit courts after the election returns have been made; of granting certificates of election to certain county officers; the mode of certifying elections when more than one county composes an election district; and of returning to the secretary of state, and canvassing the votes for governor and lieutenant governor, and members of congress.

SECTION

53. When clerk of circuit court shall make and deliver certificate of election.
54. When he shall make return to secretary of state.
55. Commission shall not be withheld for informality in return.
56. When more than one county interested, clerk to deliver certificates to the sheriff.
57. Sheriffs of such counties, when and where to meet, compare returns, and make and deliver certificate of election.
58. In case of a tie, sheriffs to certify to clerk, and clerk to governor.
59. Oldest county, how determined.
60. Time and manner of clerks making return to secretary of state, and contents thereof.

SECTION

61. Secretary of state to compare returns of congressional election, and certify to governor.
62. Clerk to make two copies of statement of votes for governor and lieutenant governor, and transmit to the speaker of the house of representatives, one by mail, and one by senator or representative.
63. Such returns to be opened, and result declared in presence of both houses, and when.
64. In case of a tie, general assembly to choose one of those having highest vote.
65. Secretary of state to give lists to printers for publication.

When clerk shall make and deliver certificate of election.

SECT. 53. In all cases in which any person has been declared duly elected, as in the preceding article is provided, to any office for which he may be chosen by the votes of the county in which the election has been held, and no notice of a contest of such election has been given, as required by law, it shall be the duty of the clerk of the circuit court of such county, after ten and within twenty days from the time said board of canvassers have made return as aforesaid, to make out under his hand and the seal of his said court, when the person so elected is not commissioned by the governor, a certificate of his election, and deliver the same upon demand to the person entitled thereto.

When clerk to make return to secretary of state.

SECT. 54. In all cases in which the persons elected to offices in any county are commissioned by the governor, excepting

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therefrom any case in which notice of contesting such election has been given according to law, it shall be the duty of said clerk, after ten days and within twenty days from the time said board of canvassers shall have made return of such election, as aforesaid, to make out a certified statement, under the seal of his said court, specifying therein the number of votes given to each person voted for, for each office, and who has by said board of canvassers been declared duly elected thereto; and shall, within the time aforesaid, transmit the same by mail to the secretary of state, at Indianapolis.

Commiss'n not to be withheld for informality in return.

SECT. 55. No commission shall be withheld by the governor on account of any defect or informality in the return of any election to the office of the secretary of state, by any clerk of the circuit court, if it can, with reasonable certainty, be ascertained from such return what office is intended, and who is entitled to such commission.

More than one county interested, clerk to deliver certificates to the sheriff.

SECT. 56. When two or more counties are joined together, to compose a district for the purpose of electing a senator or representative to the general assembly, the clerks of the respective courts in the said counties shall, on the day next succeeding the return day of such election, make out a certificate of all votes received by each individual, for senator or representative, as the case may be, and deliver the same to the sheriff of his county.

Sheriffs, when and where to meet and compare returns, and make and deliver certificate of election.

SECT. 57. The sheriffs of the respective counties composing a senatorial or representative district, shall meet on the Wednesday next following the return day of such election, between the hours of one and six o'clock of the afternoon of said day, at the court house of the oldest county in said district, where they shall compare the several certificates delivered to them by the said clerks, and shall jointly make out and transmit to the person having the highest number of votes for senator or representative, a certificate of his election.

In case of a tie, same to be certified by sheriffs to the clerk, who shall certify to the governor.

SECT. 58. If any two or more persons shall have the highest and an equal number of votes for the office of senator or representative, in any district composed of more than one county, said sheriffs shall certify that fact to the clerk of the circuit court of the county in which such sheriffs shall have compared and estimated said votes, as above provided; and such clerk shall forthwith certify the same to the governor, that a writ of election may issue, as in other cases of a vacancy in such office.

What county shall be deemed the oldest.

SECT. 59. The county first organized shall be deemed the oldest county in such senatorial or representative district; and where two or more counties in the district have been organized at the same session of the general assembly, that county shall be deemed the oldest, the initial letter of whose name occurs first in the alphabet; but if any two or more counties of the same age shall have the same initial letter, then that county shall be deemed the oldest which, in the year preceding such election, returned the greatest number of taxable polls, as set forth in the annual report of the auditor of state.

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SECT. 60. The clerks of the circuit courts of the respective counties, on the day succeeding the proper return day of such election, shall make out, in a fair hand, in words at full length, certified statements, sealed with the seals of their respective courts, of the number of votes given to each person for governor and lieutenant governor, for representative in congress, and for senator and representative in the general assembly, and shall deliver the same to some postmaster of the county, at the post office, to be transmitted by mail to the secretary of state, at Indianapolis; taking from such postmaster, if it can be obtained, a certificate, setting forth particularly the time when such certified statement was deposited in said post office, which certificates it shall be the duty of the clerks to file in their respective offices, to be carefully kept and preserved.

Time and manner of clerks making return to secretary of state; and contents thereof.

SECT. 61. It shall be the duty of the secretary of state, as soon as he shall receive the certified statements mentioned in the last preceding section, to compare and estimate the votes given for representatives in congress, and certify to the governor the person having the highest number of votes for such representative in each congressional district, as duly elected; and it shall thereupon be the duty of the governor to give to each of the persons returned to him, as aforesaid, a certificate of his election, duly sealed with the seal of the state, and attested by the secretary of state.

Secretary of state to compare returns of congressional election, and certify to governor.

Governor to give proper certificate.

SECT. 62. Each clerk of the circuit court, in every county, on the day next succeeding the return day of an election held to fill the offices of governor and lieutenant governor shall make out at full length, two separate certified statements, under the seal of his court, of the number of votes which each candidate received, according to the returns made to his office; one of which he shall seal up, and transmit to the speaker of the house of representatives of the next general assembly, by the senator or representative of his county or district, whose duty it shall be to deliver the same to said speaker, on or before the second day of the session of said general assembly; and the other certified statement shall be sealed up by said clerk, and by him transmitted by mail to Indianapolis, directed to said speaker, and to the care of the secretary of state, by whom the same shall be delivered to the speaker, on or before the second day of the session aforesaid.

Clerk to make two copies of statement of votes for governor and lieutenant governor, and transmit same to speaker of house of representatives, one by mail, and the other by senator or representative.

SECT. 63. The certified statements of the returns of each election for governor and lieutenant governor, are opened and published by the speaker of the house of representatives, in the presence of both houses of the general assembly, met in convention for that purpose, on the second day of the session next succeeding such election; and the persons having the highest number of votes for those offices respectively, are declared duly elected governor and lieutenant governor, in the presence of both houses thus convened.

Such returns to be opened, and result declared, in presence of both houses, and when. Constitution, art. 4, sect. 2.

SECT. 64. If two or more persons are equal, and highest in votes for the office of governor or lieutenant governor, one of

In case of tie, general assem-

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bly to choose. Constitution, art. 4, sect. 2.

them is chosen governor or lieutenant governor, as the case may be, by the joint vote of the members of both houses of the general assembly.

Secretary to give lists to printers for publication.

SECT. 65. The secretary of state, as he shall receive the certified statements required to be transmitted to him by this article, shall give a list prepared therefrom to the publishers of the several newspapers printed at Indianapolis, of the number of votes given to each person for governor, lieutenant governor, and representatives in congress, to be published in said newspapers.

ARTICLE VII.

Of the election of township officers, except justices of the peace, and supplying vacancies therein.

SECTION

66. By whom and when elected.
67. Elections therefor to be conducted same as general elections.
68. Board of judges to declare who are elected, and to decide in case of a tie.
69. Board of judges to make and deliver certificates to persons elected inspectors, supervisors, fence viewers and overseers, and make return to county auditor.
70. Board of judges to make return of election of constables to clerk of circuit court, who shall deliver certificates thereof to each constable.
71. Vacancies in township offices to be filled by county commissioners, when, and for what time.

By whom and when elected.

SECT. 66. The township officers for each township shall be elected by the qualified electors thereof on the first Monday of April in each year.

Elections therefor conducted in same manner as general elections.

SECT. 67. Such election shall be held and conducted, in all respects, in the same manner in which general elections are required to be held and conducted.

Board of judges to declare who are elected, and to decide in case of a tie.

SECT. 68. The board of judges of said elections shall, when they have finished counting the votes, declare the persons having the highest number of votes respectively, to be duly elected to the offices to which they are designated by the votes of the electors; and if two or more persons have the highest and an equal number of votes for the same office, said board shall decide by lot who is elected.

Certificates to be made and delivered to persons elected inspectors, supervisors, &c. and return made to county auditor.

SECT. 69. It shall be the duty of the board of judges, within three days after the election, to make out separate certificates for the persons severally elected to the offices of inspectors of elections, supervisors of roads, fence viewers, and overseers of the poor, signed by the members of said board, or a majority of them, and shall deliver the same, without delay, to the persons entitled thereto; and also to certify, within ten days after such election, to the county auditor, the persons thus elected.

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SECT. 70. It shall also be the duty of said boards respectively, to make out and return to the clerk of the circuit court of the proper county, on the first Wednesday succeeding such election, a statement certified under their hands, or a majority of them, setting forth who have been elected constables of their townships; and upon the reception thereof, said clerk shall make out and deliver to each constable thus elected, when demanded, a certificate of his election, sealed with the seal of said court.

Certificate of election of constables to be returned to clerk of circuit court, who shall deliver certificate thereof to each constable.

SECT. 71. Whenever any vacancies shall occur in any of the said township offices, from a refusal to serve or otherwise, or whenever there shall be a failure, on the part of the qualified electors of any township, to elect any or all of the said officers, it shall be the duty of the board of county commissioners, at their first meeting after the occurrence of such vacancy or failure to elect, to fill the vacant office or offices by appointment; and all persons thus appointed shall continue in office until the next annual township election, and until their successors are chosen and qualified.

Vacancies in township offices, to be filled by county commissioners, when and for what time.

ARTICLE VIII.

Of elections to fill the office of justice of the peace and to supply vacancies therein.

SECTION

72. To be conducted as general elections and held at the same place.
73. Vacancies by expiration of term of office, how filled.—Clerk to notify inspectors.
74. Order of county commissioners assigning justices in a new county or township, or giving additional justices to a township or town, to be recorded and copy certified to clerk of circuit court.

SECTION

75. In such case, and when vacancies occur, clerk to issue his precept to sheriff.
76. Sheriff to give twenty days' notice of election to the public and to inspectors.
77. Statement of election to be transmitted to clerk of circuit court.
78. Clerk to declare who is elected, and send certificate to secretary of state.

SECT. 72. All elections for justices of the peace shall be held and conducted as general elections, and at the usual places of holding the same.

Elections to be conducted as general elections, and at the same place.

SECT. 73. Vacancies in the office of justice of peace, occasioned by the expiration of the full term, shall be supplied by electing a successor, at the township election next preceding the time at which such term shall expire; and it is hereby made the duty of the clerk of the circuit court to transmit to the inspector of elections of the proper township, a certified notice of the vacancy about to occur, at least thirty days previous to the day of election; which shall be a sufficient authority to

Vacancies by expiration of term of office.

Clerk to give notice to inspectors thereof.

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authorize and require the board of judges of such township to receive, count, and estimate, votes given for persons to fill said office, and make due return thereof according to law.

Order of county commissioners assigning justices in a new county or township, or giving additional justices to a township or town, to be recorded and copy certified to clerk of circuit court.

SECT. 74. Whenever the proper board of county commissioners shall have assigned to the respective townships of any newly organized county, or shall have assigned to any new township formed in a county previously divided into townships, the requisite number of justices of the peace, or shall have ordered an additional justice or justices of the peace to be elected in any incorporated town or county seat, such board shall cause their order in the premises to be entered on the minutes and records of their proceedings, and a copy thereof shall be certified, under the seal of said board, by the county auditor, to the clerk of the circuit court of the proper county.

In such case, & when vacancy occurs, clerk of circuit court shall issue precept to sheriff.

SECT. 75. Whenever a vacancy has occurred in the office of justice of the peace, from any cause whatsoever, or whenever an election is necessary, according to the provisions of the last section, the clerk of the proper circuit court shall issue his precept to the sheriff of the county, directing him to give notice according to law, of such election.

Sheriff to give 20 days' notice of election.

SECT. 76. Said sheriff shall immediately give twenty days' notice of the time and object of holding any such election, by setting up written or printed notices thereof in three of the most public places in each or any township in which such election is to be held, and shall deliver a copy thereof to the inspector of elections of the proper township.

Statement of election to be transmitted to the clerk of the circuit court.

SECT. 77. The board of judges conducting any of the elections held under the provisions of this article, shall, upon counting the votes given for justice of the peace, make out a written statement, setting forth, in words at full length, the number of votes given to each person, for said office, which shall be signed by the members of said board of judges, or a majority of them, and transmitted by one of their number, chosen for that purpose, to the clerk of the circuit court of the county, on the first Wednesday succeeding such election.

Who to be declared elected and certificate forwarded to secretary of state.

SECT. 78. The person, or where there is more than one justice of the peace to be chosen at such election in the township, the persons, according to the number to be elected, having the highest number of votes shall be declared by the said clerk duly elected; and it shall be his duty, ten days after such election, if there be no contest, to forward to the secretary of state a certified statement, under the seal of his court, of the person or persons declared duly elected.

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ARTICLE IX.

Of contesting elections other than for members of the general assembly, governor, and lieutenant governor.

SECTION
79. Who may contest election, and for what cause. — 1. Malconduct, fraud, or corruption of officers. — 2. Ineligibility. — 3. Being convict of crime. — 4. Bribery. — 5. Illegal votes.
80. First cause of contest not to effect those having highest number of legal votes.
81. Rejection of a township shall not affect election of county officer, unless result thereby is changed.
82. Election, when to be set aside for illegal votes.
83. Who may not contest.
84. Manner of contesting — cause, when to be filed — its contents and accompanying affidavit.
85. The statement, notice, and evidence in contest on account of illegal votes.
86. Statements not to be rejected for want of form.
87. County auditor, when to certify notice of contest to clerk of circuit court.
88. Auditor to issue notice to county commissioners to meet and decide contest.
89. Citation, with copy of causes of contest, to be made by auditor and delivered to sheriff.
90. Sheriff shall serve such notice on county commissioners.
91. Also, such citation on person whose seat is contested, and how.
92. Subpœnas, how issued and served, and attendance enforced.
93. Powers of the court when trying such contest — manner of proceeding, continuances, and cost.
SECTION
94. Voters may be required to testify, and shall not be liable thereafter to penalty for having voted.
95. Court to be governed by the usual rules of law and evidence, and to render judgment according to law and right.
96. Shall declare who is elected.
97. Compensation of commissioners, and fees of sheriff, auditor, and witnesses.
98. Judgment for cost, when against party contesting.
99. Judgment for cost, when against party whose election is contested.
100. Cost may be collected by fee bill or otherwise, as in circuit court.
101. Attachments and executions, by whom issued, to whom and where returnable.
102. Appeal to circuit court may be had in ten days—bond and affidavit of merits to be filed.
103. Transcript and papers to be filed by auditor in circuit court within ten days.
104. Trial of appeal—continuance—cost.
105. Judgment of the circuit court therein.
106. If election is confirmed, proper certificates to be given.
107. If election is annulled, new election how ordered.
108. Election being affirmed, auditor in certain case to certify to clerk of circuit court.
109. Contests arising on the first election in a new county, to be heard in the next nearest county.

SECT. 79. Any elector of the proper county may contest the right of any person declared duly elected to an office, to be exercised in and for such county; and also any elector of a township may contest the right of any person declared duly elected to any office, in and for such township, including the office of justice of the peace, for any of the following causes, to-wit: Who may contest election, and for what causes.

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For malconduct, fraud, or corruption of officers of election. Not being eligible.

1. For malconduct, fraud, or corruption on the part of the board of judges, board of canvassers, or any member of either of said boards.

2. When the person, whose right to the office is contested, was not, at the time of the election, by reason of any cause whatsoever, eligible to such office.

Being convict of crime.—Constitution, art. 6, sect. 4.

3. When the person, whose right is contested, shall have been, previous to such election, convicted of an infamous crime, by any court of competent jurisdiction; such conviction not having been reversed, annulled, or set aside, nor such person relieved from the legal infamy of such conviction, by a pardon from the executive, or otherwise, at the time of such election.

For bribery. Constitution, art. 11, sect. 5.

4. When the person whose right is contested, has given to any elector or inspector, judge or clerk of the election, any bribe or reward, in money, property, or thing of value; or shall, in like manner, have offered any such bribe or reward for the purpose of procuring his election.

For illegal votes.

5. On account of illegal votes.

First clause of preceding section not to affect those having highest number of legal votes.

SECT. 80. No irregularity or improper conduct in the proceedings of the officers, named in the first cause of contest, specified in the preceding section, shall be construed to amount to such malconduct as to annul or set aside any election, unless the irregularity or improper conduct shall have been such as to procure the person, whose right to the office may be contested, to be declared duly elected, when he had not received the highest number of legal votes.

Rejection of a township, when to affect election for a county officer.

SECT. 81. When any election, held for an office exercised in and for a county, is contested on account of any malconduct, fraud, or corruption on the part of the board of judges of any township election, or any member thereof, the election shall not be annulled and set aside upon proof thereof, unless the rejection of the vote of such township or townships shall change the result as to such office in the remaining vote of the county.

Election, when to be set aside for illegal votes.

SECT. 82. Nothing in the fifth ground of contest, specified in the first section of this article, shall be so construed as to authorize an election to be set aside on account of illegal votes, unless it shall appear that an amount of illegal votes has been given to the person whose right to the office is contested, which, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

Who may not contest.

SECT. 83. No person shall be competent to contest any election, unless he is a qualified elector of the district, county, or township, as the case may be, in which the office is to be exercised, to fill which, such election has been held.

Manner of contesting—cause, when to be filed—its contents, and affidavit.

SECT. 84. When any such elector shall choose to contest the right of any person declared duly elected to such office, he shall file, within ten days after the return day of such election, with the county auditor, or person acting as clerk of the board of

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county commissioners, a written statement, containing and setting forth specifically:

1. The name of the party contesting such election, and that he is a qualified elector of the district, county, or township, as the case may be, in which such election was held;

2. The name of the person whose right to the office is contested;

3. The office to fill which such election was held, and the time of such election; and,

4. The particular cause or causes of such contest; which statement shall be verified by the affidavit of the contesting party, that the matters and things therein contained are true, as he verily believes.

General statement of illegal votes sufficient; but notice shall be given to opposing party of the names of illegal voters, and testimony confined thereto.

SECT. 85. When the reception of illegal votes is alleged as a cause of contest, it shall be a sufficient statement of such cause, to state generally that illegal votes were given to the person whose election is contested, in the specified township or townships, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony shall be received of any illegal votes, unless the party contesting such election shall deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial; and no testimony shall be received of any illegal votes, except such as are specified in such list.

Statement not to be rejected for want of form, if substantially correct.

SECT. 86. No statement of the cause of contest shall be rejected, nor the proceedings thereon dismissed by any board of county commissioners or court before which such contest may be brought for trial, for want of form, if the particular cause or causes of contest shall be alleged with such certainty as will sufficiently advise the defendant of the particular proceeding or cause for which such election is contested.

When county auditor is to certify notice of contest to clerk of circuit court.

SECT. 87. When any such statement is filed with the auditor of the county, giving notice of the contest of any election, in which it is the duty of the clerk of the circuit court to issue to the person elected a certificate of his election, or to transmit a certified statement of the result of such election to the secretary of state, the said county auditor shall immediately give notice in writing to the clerk of said circuit court, that the right to the office specified in such statement is contested.

Audit'r to issue notice to county commissioners to meet and decide contest.

SECT. 88. The said auditor shall, forthwith, upon such statement being filed in his office, issue a notice to the board of county commissioners to meet at the court house in such county, at such time as he shall designate, not less than ten nor more than twenty days from the time of issuing such notice, that they may hear and determine such contested election.

Citation and copy of causes to be made and delivered to sheriff by auditor.

SECT. 89. Said auditor shall, also, at the same time, issue a citation for the person whose right to the office is contested, to appear at the time and place specified in said notice given to the board of county commissioners; and said auditor shall, also,

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make out a certified copy of the statement of the causes of such contest; and said notice, citation, and certified copy shall be forthwith delivered by him to the sheriff of the county.

Sheriff shall serve such notice on each county commissioner.

SECT. 90. Said sheriff shall, immediately after the reception thereof, serve such notice on each member of the board of county commissioners.

Shall serve citation on the person whose seat is contested, and how.

SECT. 91. The said sheriff shall also, within two days after the reception of said citation, serve the same on the person whose election is contested, by personal service thereof, and by delivering to him said certified copy; or if he cannot be found, then by leaving such certified copy, and a copy of the citation, at the house where such person last resided.

Subpœnas for witnesses, how issued and served, and attendance enforced.

SECT. 92. The county auditor shall issue subpœnas for the attendance of witnesses in such contested election, at the request of either party, which shall be served by the sheriff as subpœnas issued from the circuit court; and the board of county commissioners shall have full power to issue attachments, to compel the attendance of witnesses who have been duly subpœnaed to appear, if they shall fail to attend.

Powers of the court trying such contest, and manner of proceeding.

SECT. 93. Said board of county commissioners shall meet at the time and place designated, as a court, to hear, try, and determine such contested election; and as such court shall have all the powers necessary to the just hearing, trial, and determination of the same; and shall have the same power to swear and direct the examination of witnesses, and punish for contempts in their presence, as belongs by law to other courts; and may adjourn from day to day, until such trial is ended and determined; and shall also have power to continue said trial before its commencement, to any convenient time, not exceeding twenty days, for sufficient cause shown by either party, upon affidavit, at the cost of the party applying for such continuance; and to make such order respecting such cost as may be necessary; and an attachment to coerce the payment of such cost may be issued by order of such board.

Voters required to testify, and thereafter not to be liable to penalty for having voted.

SECT. 94. It shall be lawful to require any person called, as a witness, who shall have voted at such election, to answer touching his qualifications; and if he was not a qualified voter of the county or township, then to require him to answer for whom he did vote at such election; and if such witness shall answer such questions, he shall not thereafter be liable to pay any fine or penalty, in any criminal prosecution, for having voted at such election.

Court to be governed by the usual rules of law and evidence, and to render judgm't according to law and right.

SECT. 95. Said board of county commissioners shall be governed in the trial and determination of such contested election by the usual rules of law and evidence, governing the determination of questions of law and of fact, in the courts of law in this state, so far as the same may be applicable; and may dismiss the proceedings, if the statement of the cause or causes of contest is insufficient, or for want of prosecution; and also, after hearing the proofs and allegations of the parties, shall pronounce judgment in the premises, either confirming or annulling and

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setting aside such election, according to the law and right of the case.

Shall declare who is elected.

SECT. 96. If, in any such case, it shall appear that another person than the one returned has the highest number of legal votes, said board shall declare such person duly elected; and the fact shall be so certified, if necessary, to the proper officer.

Compensation of commissioners, and fees of auditors, sheriffs, and witnesses.

SECT. 97. The board of county commissioners shall receive the same compensation, out of the county treasury, for each day's attendance on such trial, as they receive during a regular session of the board; and the auditor, sheriff, and witnesses, shall receive, respectively, the same fees from the party against whom judgment is given, as are allowed for similar services in the circuit court.

Judgment for cost, when vs. party contesting.

SECT. 98. If the proceedings are dismissed for insufficiency, want of prosecution, or the election is by the judgment of the board confirmed, judgment shall be rendered against the party contesting such election, for costs, in favor of the party whose election was contested.

Judgment for cost when against person whose election was contested.

SECT. 99. If such election is annulled and set aside, judgment for costs shall be rendered against the party whose election was contested, in favor of the party contesting the same.

Cost may be collected by fee bill or otherwise as in circuit court.

SECT. 100. Each party shall be liable for the costs created by himself, to the officers and witnesses entitled thereto, which may be collected by fee bill, or by whatever mode similar costs are collected in the circuit court.

Attachments and executions, by whom issued, to whom and when returnable.

SECT. 101. Attachments for the non-payment of cost and executions issued upon any judgment of said board, shall be issued by the auditor to the sheriff of such county, who shall make due service and return thereof; and said attachments and executions, issued according to the provisions of this article, shall be returnable before said board, at such regular term of its meeting as the board may direct.

Appeal may be had in ten days to cir. court,—

SECT. 102. Either party, feeling himself aggrieved by the judgment of said board, may appeal therefrom to the circuit court of the proper county, within ten days after the rendition thereof, by filing with the auditor of the county an appeal bond, in the penal sum of double the amount of the costs which have accrued, and which probably may accrue thereon in the circuit court, with good and sufficient security, and with the condition that he will pay all said costs, if judgment shall be given against him upon the final determination of said appeal, in the circuit court; and shall also file, with said appeal bond, his affidavit, stating that he has merits in his said appeal, as he is informed and verily believes, and that the same is not taken to harrass and oppress the opposite party, but that right and justice may be done.

Bond and affidavit of merits to be filed.

Transcript and papers to be filed by auditor in circuit court within ten days

SECT. 103. The auditor, within ten days after said appeal bond and affidavit are thus filed, shall deliver the same, together with a certified copy of the statement of the causes of contest, and a transcript of the proceedings and judgment of said board

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of county commissioners, to the clerk of the circuit court, who shall file the same in his office.

Trial of appeal, continuance, cost.

SECT. 104. Said appeal shall be tried and determined by the circuit court, in the manner the same is required to be tried and determined by the board of county commissioners: but said cause shall be tried at the first term of said circuit court, next after the filing of said appeal, unless the court, for good cause shown by either party, shall contine the same; the cost of which continuance shall be paid by the party applying therefor.

Judgment of the court thereon.

SECT. 105. The said court may dismiss said appeal, when the same is insufficiently taken, or for want of prosecution; or may dismiss the whole proceedings for any substantial defect therein: and in any such case, or if the cause is tried upon its merits, shall pronounce such judgment, affirming or setting aside and annulling such election, as should have been rendered in the premises by said board of county commissioners.

If election is confirmed, proper certificates to be given.

SECT. 106. If such election is confirmed by the judgment of the circuit court, or of the board of county commissioners, and no appeal be taken therefrom, a certificate of election shall be issued, by the proper officer, to the person whose right to the office was contested; or his election shall be certified by the clerk of the circuit court to the secretary of state, as the law may require.

If election is set aside, new election. how ordered.

SECT. 107. If by said judgment, such election shall be annulled and set aside, said clerk shall issue, as in case of a vacancy, a precept for a new election; or shall transmit a certified notice thereof to the secretary of state, that a writ of election may issue, as the law governing such cases shall require.

Election being affirmed, auditor in certain cases to notify clerk of circuit court.

SECT. 108. When the person whose right to the office is contested is entitled to a certificate of election from the clerk of the circuit court, or to a commission from the governor, and the judgment of the said board is not appealed from in the time prescribed by law, the county auditor shall certify said judgment to said clerk of the circuit court.

Contests arising on first election in new counties to be heard in the nearest county.

SECT. 109. In all contests of elections arising out of the first election in new counties, such contest shall be instituted, heard, and determined, at the county seat nearest to the county in which such contested election originated; and for that purpose the board of county commissioners of such nearest county, is hereby constituted a competent tribunal to hear, try, and determine such contested election, in all respects, and subject to the same rules, regulations, and appeal, as if the said contested election had originated in such nearest county.

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ARTICLE X.

Of contesting elections for members of the general assembly.

SECTION
110. Who may contest
111. Cause of contest, when and where to be filed, and affidavit.
112. Clerk to issue commission for examination of witnesses.
113. Notice of contest and of taking depositions, how to be given.
114. Service thereof and return to be made by sheriff—his fees therefor.
115. Subpœnas, how issued, and attendance of witnesses how enforced.
116. Section ninety-four adopted, requiring voters to testify and thereafter discharging them from all penalties incurred by such voting.
117. Duty of justices, and manner of taking and certifying depositions.
118. May continue from day to day—Depositions to be returned to clerk of circuit court.
SECTION
119. Vacancies may be supplied by clerk of circuit court.
120. Sheriff's and justice's fees, how and by whom paid.
121. Clerk to seal up and transmit papers to secretary of state.
122. Secretary of state to deliver same to presiding officer of the proper house, who shall notify house thereof.
123. Each house to judge of, and try elections of its own members.
124. Further depositions may be taken—regulations therefor.
125. Either house may grant commissions to take testimony, or may subpœna witnesses.

Who may contest.

SECT. 110. The right of any person declared duly elected to a seat in the senate or house of representatives of the general assembly, may be contested by any qualified voter of the county or district to be represented by such senator or representative.

Cause of contest to be filed, when and where.—Affidavit.

SECT. 111. The person contesting such election, shall, within ten days after such election, file with the clerk of the circuit court of the county in which the alleged cause or causes of contest originated, a concise statement of the grounds on which he intends to rely in contesting such election, verified by affidavit.

Clerk to issue commission for examination of witnesses.

SECT. 112. Immediately on the filing of such concise statement in the clerk's office, it shall be the duty of the said clerk to issue a commission, directed to two justices of the peace of his county, not of kin to the party contesting such election, nor to any person who was a candidate at such election for the office the right to which is contested, to meet at such time and place as shall be specified in such commission, not less than twenty nor more than thirty days from the time of issuing the same, for the purpose of taking the depositions of such witnesses as the parties to such contest may wish to examine.

Notice of contest and of taking depositions, how to be given.

SECT. 113. Written notice of such contest, specifying the time and place of taking depositions and before whom to be taken, and a copy of such concise statement, certified by the clerk of said court, shall be delivered to the person whose election is contested; or, if he cannot be found, shall be left at the house where he last resided by the sheriff of the county in

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which such person claims his residence, within ten days after such concise statement shall have been filed in the clerk's office.

Service and return thereof to be made by sheriff and his fees therefor.

SECT. 114. The sheriff into whose hands such notice and certified copy may come shall make due service thereof, as required in the preceding section, and shall return to the proper clerk, under his hand, a certified copy of such notice, with the manner and time of service endorsed thereon; for which he shall be entitled to receive, from the party contesting such election, the same fees for service and mileage as are allowed in case of writs of summons issued out of the circuit courts.

Subpœnas and attendance of witnesses, how enforced.

SECT. 115. Either of said justices of the peace shall have power, at any time, to issue subpœnas for witnesses, at the request of either party, to be served by the sheriff as other subpœnas; and such justices, when met at the time and place appointed to take such depositions, shall have the same power to issue attachments and assess fines against witnesses, as is given to justices of the peace in the trials of suits instituted before them.

Voters may be required to testify—shall then be released from all penalties incurred by such voting.

SECT. 116. The provisions of the ninety-fourth section of this chapter shall, in all respects, be applicable to, and govern similar cases in taking the depositions of witnesses under the provisions of this article.

Duty of justices and manner of taking and certifying depositions.

SECT. 117. Said justices of the peace shall meet at the appointed time and place, to take the depositions of witnesses produced by the parties; which depositions shall be reduced to writing by said justices, and sworn to and subscribed by the said witnesses respectively, and duly certified by said justices as depositions are in other cases, noting in the caption of each depositition by which party the witness was called.

May continue from day to day. Depositions to be returned to clerk of circuit court.

SECT. 118. Said justices may continue the said examination from day to day, if the business shall require it; and when the same is closed they shall deliver the depositions taken before them, together with their said commission, to the clerk of the circuit court by whom the same was issued.

Another justice may be designated to supply vacancy.

SECT. 119. If, at any time, either of said justices shall become unable to proceed in such examination, said clerk may supply the vacancy by designating any other justice of the peace of the county, in the place of such justice.

Sheriff's and justice's fees, and how and by whom paid.

SECT. 120. The said sheriff, for the service of such subpœnas, and the said justices, for issuing subpoenas and taking said depositions, shall receive from the party at whose instance such services are performed, the same fees as are allowed to said officers for similar services in other cases.

Clerk to seal up and transmit papers to secretary of state.

SECT. 121. It shall be the duty of the said clerk to seal up said depositions, together with the original statement of the grounds of such contest, and the copy of the notice served on the party whose right is contested, and the commission issued to said justices of the peace, under a strong and sufficient paper cover, and transmit the same, by mail, to the secretary of state at Indianapolis; endorsing thereon the names of the contesting parties, and the branch of the legislature before which such contest is to be tried.

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SECT. 122. It shall be the duty of the secretary of state to deliver the same, unopened, to the presiding officer of the house in which such contest is to be tried, on or before the second day of the session of the general assembly next after taking such depositions; and such presiding officer shall immediately give notice to said house that said papers are in his possession. Secretary of state to deliver same to presiding officer of the proper house who shall notify house thereof.

SECT. 123. Each house of the general assembly is the judge of the qualifications and elections of its members, and shall try all contested elections of its members in such manner as it may direct. Each house to judge of, and try elections of its own members.—Const., art. 3, sect. 8.

SECT. 124. At any time after notice of any contest shall be given, and before the trial of such contested election before the proper branch of the general assembly, it may be lawful for either party to such contest to take depositions to be read on the trial thereof, in like manner, and under the same rules, as are allowed and required in the case of depositions to be read on any trial pending in the circuit court; and such depositions, when thus taken, shall be sealed up by the officer taking the same, and directed to the secretary of state at Indianapolis, who shall keep the same unopened, and deliver them to the presiding officer of the house in which such contest is to be tried, to be disposed of by such officer as the depositions specified in the preceding sections of this article. Further depositions may be taken—regulations therefor.

SECT. 125. Nothing contained in this article shall be so construed as to abridge the right of either branch of the general assembly trying any contested election, from granting commissions to take testimony, or from sending for and examining before such branch, any witnesses it may desire to hear on such trial. Either house may grant commissions to take testimony, or may s'bpœna witnesses.

ARTICLE XI.

Of contesting the election of governor and lieutenant governor.

SECTION
126. Who may contest.
127. Cause of contest, with affidavit, to be delivered to whom, and when.
128. Notice to person elected, of such contest—by whom to be given, and how served.
129. Notice thereof to each house.
130. Seven persons to be chosen by each house, and how.
131. Same to constitute a committee to try such contest—their powers and manner of proceeding.
132. Testimony confined to the specified points of contest.
133. Judgment to be final—if office is thereby vacated, how filled.

SECT. 126. Any qualified elector of the state may contest the election of any person declared duly elected governor or lieutenant governor of the state of Indiana. Who may contest.

SECT. 127. When such elector chooses to contest such election, he shall, within twenty days after proclamation thereof, Cause of contest, with affidavit, to be deliver'd to whom and when.

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deliver to the presiding officer of each house of the general assembly a specification of the grounds of such contest; stating therein that he is a qualified elector of said state; which specification shall be verified by the affidavit of such elector.

Notice of such contest, by whom given and how served.

SECT. 128. As soon as said presiding officers shall have received said specifications, they shall forthwith make out a notice, in writing, directed to the person whose election is contested, and deliver the same to a sergeant-at-arms, who shall serve such notice, forthwith, on the persons therein named.

Notice to be also given to each house.

SECT. 129. Said presiding officers shall also immediately give notice to their respective houses that such specifications of the grounds of contest have been received.

Seven persons to be chosen by each house, and how. Constitution, art. 4, sect. 2.

SECT. 130. Each house shall forthwith proceed, separately, to choose seven persons, members of its own body, in the following manner:

1. The names of the members of each house, except the speaker of the house of representatives, written on similar paper tickets, shall be placed in a box; that is, the names of the senators in presence of the senate, by their secretary; and of the house of representatives in their presence, by their clerk.

2. The secretary of the senate, in the presence of the senate, and the clerk of the house of representatives, in the presence of the house, shall draw from their respective boxes the names of seven members each.

3. As soon as the names are thus drawn by each house, notice thereof and the names of the members drawn, shall be given to the other house; and the names of said fourteen members, thus drawn, shall be entered on the journals of the houses respectively.

Same to constitute a committee to try such contest—their powers and manner of proceeding.

SECT. 131. The members thus selected shall constitute a committee to try and determine such contested election; and for that purpose shall hold their meetings publicly, at the capitol, at such time and place as they may designate; and may adjourn from day to day, or to a day certain, until such trial shall be ended and determined; shall have power to send for persons and papers, and to take all necessary means to procure testimony; extending like privileges to the contestor and the person whose right is contested; and shall report their judgment in the premises to both branches of the general assembly, which report shall be entered on the journals of the respective houses.

Testimony confined to points of contest.

SECT. 132. The testimony received in such investigation shall be confined to the points contained in the said specification of the grounds of contest.

Judgment final —office, how filled, if thereby vacated

SECT. 133. The judgment of said committee, pronounced in the final decision of said contested election, shall be conclusive as to the validity or invalidity thereof; and if said election is adjudged invalid, the office rendered vacant by such decision shall be filled in the mode required by the constitution.

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ARTICLE XII.

Of electors of president and vice president of the United States.

SECTION
134. Election for electors, when and where to be held—number of electors—election, how conducted.
135. Notice to be given by sheriffs, when and how.
136. Certificate of election—contents—how transmitted to clerk of circuit court—votes, how canvassed—certificate of result to be delivered to marshal.
137. Each circuit to compose a return district.
138. Governor to appoint a marshal for each district—term of office.
139. Marshal's oath—authority to receive certificates, how evidenced.
140. He shall bring returns to seat of government.
141. Marshal may appoint deputies—their oath—associate judges when to appoint marshal.
SECTION
142. Marshal to deliver returns to secretary of state—same when to be opened and compared, and how.
143. Certificate of election, how transmitted to electors.—Tie, how determined.
144. Electors, when and where to assemble and elect.—Governor to attend.—Vacancies occasioned by nonattendance, how filled.
145. When electors to fill vacancies have equal number of votes, to be determined by lot.
146. Electors to certify their choice to governor who shall cause notice to be given to elector so chosen.
147. Such electors, when and where to meet to elect president, &c.

SECT. 134. The qualified electors of this state shall, on the first Monday of November, in the year of our Lord one thousand eight hundred and forty-four, and on the first Monday in November in every fourth succeeding year, assemble in their respective counties at the usual places designated for holding elections, and proceed to elect a number of electors of president and vice president of the United States, equal to the number of senators and representatives to which this state may be entitled by law in the congress of the United States, at the time when the president thus to be chosen should come into office; and where no apportionment of representatives shall have been made after enumeration at the time of choosing electors, the number of electors shall be according to the existing apportionment of senators and representatives; which election shall commence and close at the same hours, and be conducted in the manner as is or may be directed by law for electing members of the general assembly of this state.

Election for electors, when and where to be held, how conducted, and number of electors.

SECT. 135. It shall be the duty of each and every sheriff within this state, to give notice of the time of holding such elections, together with the number of electors to be elected, by publishing the same in some newspaper within the county, or by written or printed notices to be set up at the most usual places of holding elections in the respective townships, at least twenty days preceding the time of holding said election.

Notice to be given by sheriffs.

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Judges to make certificate—contents—to whom delivered—votes, how canvassed—Certificate of result to be delivered to marshal.

SECT. 136. It shall be the duty of the board of judges of such election in the several townships, to make out a certificate under their hands and seals; which certificate shall certify, in words at full length, the number of votes that each person received for elector, and the same shall be attested by the clerks of said election; which certificate shall be sealed in the presence of the judges of such election, and the same shall be put into the hands of one of the judges, who shall, on the ensuing Wednesday, deliver the same to the clerk of the circuit court, at the court house or usual place of holding courts in and for said county, or, in his absence, to his deputy; and in case there is neither clerk nor deputy, then to the sheriff of the county; and if there is no sheriff, then to the coroner thereof, who shall, in the presence of all the judges of election who may attend from the different townships, between the hours of twelve and four o'clock of said day, compare the different returns, and make out in a fair hand, in words at full length, a certificate of the number of votes each candidate for elector received in the county, agreeably to the returns received from the several townships; which certificate shall be signed by the clerk, deputy, sheriff, or coroner, who may attend, and be sealed with the seal of the county, to be used for that purpose, and delivered by such clerk, deputy, sheriff, or coroner, as the case may be, to the marshal that may be appointed to convey the votes from the district in which the county is situate, to the seat of government.

Each circuit to compose a return district.

SECT. 137. Each judicial circuit of this state shall compose one return district, and shall be numbered as the circuits are numbered when the votes are taken.

Governor to appoint a marshal for each district.—Term of office.

SECT. 138. It shall be the duty of the governor of this state, on or before the first Monday in August of every year in which a president and vice president of the United States are to be elected, to appoint some trusty citizen of the state of Indiana, in each of the aforementioned districts, who shall be known as the marshal of such district, to be in office until all the duties required of such officer by this act are performed, and no longer.

Marshal's oath—authority to receive certificates, how evidenced.

SECT. 139. It shall be the duty of such marshal, within ten days after receiving the appointment aforesaid, and before the first Monday in November in the year aforesaid, to go before some officer authorized by law to administer oaths, and shall there make an affidavit that he will, without fraud or delay, (accidents excepted,) perform the several duties required of him by this article, and well and truly deliver the several certificates or returns of votes for electors of president and vice president of the United States to the secretary of state, as he may receive the same at the different counties, in such manner as is prescribed by law; and shall have the same endorsed by the officer that may administer the oath on the back of the governor's appointment; which shall be an authority for such marshal to receive the certificates from the officer of the county who may be in possession of the same.

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SECT. 140. It shall be the duty of the marshal of each district to bring the returns from each county in his district to the seat of government, at such time and in such manner as is prescribed by this article. He shall bring returns to seat of government.

SECT. 141. The marshals named in this article are hereby authorized to appoint one or more deputies, where the necessity of the case may require it; which deputy or deputies are required to take the same oath that the said marshal is required to take: and in all cases where any marshal in this article named may die, or remove from this state, after the fifteenth of August next before such election, it shall be the duty of the associate judges of the circuit court of the county where such marshal resided, to convene and forthwith proceed to appoint a marshal in place of such deceased or removed marshal; which said marshal, when so appointed, shall take the same oath, perform the same duties, and receive the same compensation, and shall be liable to the same penalties, that a marshal appointed under the other provisions of this article would be entitled to receive, perform, take, or sustain. Marshals may appoint deputies, their oath. When associate judges shall appoint marshal.

SECT. 142. It shall be the duty of the several marshals appointed by virtue of the provisions of this article within this state, or their deputies, to deliver such certificates to the secretary of state, on the fourth Monday of November, between the hours of nine and eleven o'clock of the morning of said day, at the seat of government: and it shall be the duty of the secretary of state, in the presence of the governor, and all the marshals who may attend from the different districts in this state, between the hours of twelve and six o'clock, on said fourth Monday of November, to open and compare the certificates so delivered by the marshals, and read aloud the number of votes each person has received for elector of president and vice president of the United States, and shall make out a fair abstract of the names of the persons voted for, and the number of votes given to each. Marshals, when to deliver certificates to secretary of state—same to be opened and compared, when and how.

SECT. 143. It shall be the duty of the governor forthwith to make out for the persons having the highest number of votes, certificates of their having been duly elected electors of president and vice president of the United States; and to transmit by the marshals, or some special messenger, the proper certificate to each, and shall forthwith cause the election of electors to be published in the newspapers printed at the seat of government: But if more than the number of persons to be elected, have the greatest and an equal number of votes, then the election of those having an equal number of votes shall be determined by lot, to be drawn by the secretary of state, in the presence of the governor and the marshals aforesaid. Certificate of election to be made by governor, and how transmitted to electors: tie, how determined.

SECT. 144. The said electors of president and vice president of the United States shall assemble at the seat of government, in the chamber of the house of representatives, on the first Wednesday in December, or such other day as may be hereafter fixed by congress to elect such president and vice president, at Electors, when and where to assemble and elect.

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Governor to attend.

Vacancies occasioned by non attendance to be filled by electors.

the hour of ten o'clock, A. M., of said day: and it shall be the duty of the governor to attend at the same time and place, and deliver to the electors present a certificate of the names of all the electors; and if upon examination, it shall be found that one or more of said electors are absent, and shall fail to appear before eleven o'clock in the morning of said day of election of president and vice president of the United States, the electors then present shall immediately proceed to elect by ballot, in presence of the governor, a person or persons to fill such vacancy or vacancies as may have been occasioned by the non-attendance of one or more of the electors.

When electors to fill vacancies have equal number of votes, to be determined by lot

SECT. 145. If more than the number of persons required to fill a vacancy or vacancies as aforesaid, shall have the greatest and an equal number of votes, then the election of those having such equal and highest number of votes shall be determined by lot, to be drawn by the governor, in the presence of the electors attending; otherwise, he or they to the number required, having the greatest number of votes shall be considered as elected to fill such vacancy or vacancies.

Electors to certify their choice to governor, who shall cause notice to be given to elector so chosen.

SECT. 146. Immediately after such choice is made, in manner aforesaid, the name or names of the person or persons so chosen, shall forthwith be certified to the governor, by the electors making such choice: and the governor shall immediately cause notice in writing to be given to each and every of the electors so chosen to fill such vacancy or vacancies as aforesaid; and the person or persons so elected and notified shall be electors.

Such electors, when and where to meet to elect president, &c.

SECT. 147. The electors who shall be chosen as aforesaid, shall assemble in the chamber of said house of representatives, on the said first Wednesday in December, or such other day as may be fixed by congress, at twelve o'clock, A. M. of said day, and then and there proceed to vote by ballot for president and vice president of the United States, and do and perform all other things and duties required and enjoined by the constitution and laws of the United States.

ARTICLE XIII.

Of the compensation of certain officers and persons in relation to elections.

SECTION
148. Allowance to be made to judges, clerks, and inspectors of elections on their road tax.
149. How paid when not liable to work on roads.
150. Allowance to returning judge or inspector.
SECTION
151. Allowance to sheriff and officer making certificate of presidential election.
152. Same to be paid out of county treasury.
153. Compensation of electors and marshals, how audited and paid. 1. Of electors. 2. Of marshals.

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SECT. 148. Each inspector, judge, and clerk of any election held according to the provisions of this chapter, shall have credit for one day's work on the public roads of his proper road district for every day he shall be employed in attending an election; except that whenever more than three hundred votes are taken at any poll, the board of county commissioners may make to such inspector, judges, and clerks, such additional compensation as shall be just and reasonable. Allowance to be made to judges, clerks, and inspectors of elections on their road tax.

SECT. 149. But in all cases where any inspector, judge, or clerk of an election shall not be bound by law to work on the public roads, said board of county commissioners shall allow each such inspector, judge, or clerk, one dollar per day for his services, besides the additional compensation provided for by the preceding section. How paid, when not liable to work on roads.

SECT. 150. The board of county commissioners shall allow each returning judge or inspector of an election, a reasonable compensation for his services, rendered in compliance with the provisions of this chapter. Allowance to returning judge or inspector.

SECT. 151. The sheriff of each county, for his services performed in making publication of the time of holding the presidential or any other election, and the officer making the certificate of the number of votes given to each person for elector of president and vice president, in presence of the returning judges, shall receive for their respective services the sum of one dollar each. Allowance to sheriff and officers making certificate of presidential election.

SECT. 152. The allowances made pursuant to the preceding provisions of this article, shall be paid out of the county treasury of the proper county. Allowances paid out of county treas'y.

SECT. 153. The compensation of the electors and marshals, in the case of the election of president and vice president, shall be audited by the auditor of state, and paid by the state treasurer, out of any moneys not otherwise appropriated, as follows, to-wit: Compensation of electors and marshals, how audited and paid.

1. Every elector of president and vice president of the United States, who shall attend at the seat of government as such elector, shall receive two dollars per day for every day's attendance, and two dollars for every thirty miles travel of the estimated distance by the most usual route, in coming from his residence to the seat of government, and the like sum for returning. 1. Of electors.

2. The marshals appointed by the governor to collect the returns of the votes given for such electors, shall be allowed the sum of ten cents for every mile they shall travel in collecting said returns, and ten cents per mile for each mile they may travel to and from the seat of government; to be computed by the nearest and most usual route from county seat to county seat, and to the seat of government to and from the county seat nearest thereto. 2. Of marshals.

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ARTICLE XIV.

Of the penalties for misconduct at elections, and for violations of certain provisions of this chapter.

SECTION
154. Penalty for attempting to restrain freedom of election by threats, interference, bribery, &c.
155. Penalty for imposing false ticket on elector.
156. Penalty for fraudulently deceiving or attempting to deceive elector.
157. Penalty for fraudulently voting, or attempting to vote illegally.
158. Penalty for voting or attempting to vote more than once, or voting double ticket.
159. Penalty on inspector, judge, or clerk, interfering to control elector.
160. Penalty on same officers for examining ticket, marking the same, or disclosing the names therein.
161. Penalty on officers for neglect of any duty required by this chapter.
162. Secretary of state to certify to prosecuting attorneys the failure of clerks to perform duties—certificate prima facie evidence of such failure.
163. This chapter to be given in special charge to grand juries.
164. Prosecuting attorney shall present all violations to grand jury.
165. 'Election,' meaning thereof defined.

Penalty for attempting to restrain freedom of election by threats, interference, bribery, &c.
Carter v. *Harrison and another*, 5 Blackf. 138.

SECT. 154. If any person shall, directly or indirectly, use any threats, menace or force, or any corrupt means or device whatsoever, at or previous to any election held pursuant to this chapter, towards any elector, to hinder or deter such elector from voting at such election; or shall attempt, by any means whatever to awe, restrain, hinder, or disturb any elector, in the free exercise of the right of suffrage; or shall, directly or indirectly, offer any bribe, fee, or reward, in money, meat, drink, or property of any kind whatsoever, in order to persuade or induce such elector to vote contrary to his own judgment or inclination; or shall, on the day of any election, give any public treat, or authorize or direct any person to give such treat on his behalf, with a view to obtain any votes for himself, or for any other person who may be a candidate for office at such election, such person so offending against any of the provisions of this section, shall, upon due conviction thereof in any court of competent jurisdiction, be fined in any sum not exceeding five hundred dollars, and shall be incapable of holding any office of honor, trust, or profit for the term of two years next succeeding such conviction.

Penalty for imposing false ticket on elector.

SECT. 155. If any person shall furnish any elector, wishing to vote at any election held pursuant to the provisions of this chapter, who cannot read, with a ticket, such person informing, or giving such elector to understand, that it contains a name or names written or printed thereon different from the name or names which are written or printed thereon, such person shall, upon due conviction thereof in any court of competent jurisdiction, be fined in any sum not less than ten nor more than one hundred dollars.

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SECT. 156. If any person shall defraud any elector, at any such election, by deceiving and causing him to vote for a different person, for any office, than such elector desired or intended to vote for, or shall fraudulently attempt to deceive and cause such elector thus to vote for a different person, for any office, than he desired and intended to vote for; every such person so offending, shall, upon due conviction thereof, in any court of competent jurisdiction, be fined not less than ten nor more than one hundred dollars. Penalty for fraudulently deceiving or attempting to deceive elector.

SECT. 157. If any person, not having the legal qualifications of an elector, shall fraudulently vote, or shall fraudulently attempt to vote at any election, such person, on conviction thereof, shall be fined in any sum not less than five nor more than fifty dollars. Penalty for voting or attempting to vote illegally.

SECT. 158. Each qualified elector may vote once, and no more, at each election. If any elector shall vote more than once at any election, or shall knowingly hand in two or more tickets folded together, or shall attempt to vote more than once at the same election, or having voted in one township or county, shall afterwards, on the same day, go into another township or county, and there vote, or attempt to vote, every such person thus offending, shall, upon conviction thereof, be fined in any sum not exceeding fifty dollars, and shall, moreover, be rendered incapable of voting at any election, or holding any office in this state for the next two years thereafter. Penalty for voting or attempting to vote more than once, or voting double tickets.

SECT. 159. If any inspector, judge, or clerk of any such election, whilst acting as such, shall induce, or attempt to induce, any elector, either by persuasion, menace, or reward, or promise thereof, to vote differently from what such elector shall intend or desire to vote, such person so offending, shall, upon due conviction thereof, in any court of competent jurisdiction, be fined in any sum not less than fifty nor more than five hundred dollars. Penalty on inspector, judge, or clerk, interfering to control elector.

SECT. 160. If any inspector, judge, or clerk of an election, shall, previous to putting the ballot of any elector in the ballot box, attempt to pry into or find out any name or names on such ballot, which shall have been handed in, by said elector, in a folded form; or if any inspector, judge, or clerk of an election shall open or suffer the folded ballot of any elector, which has been handed in to the board of judges to be opened or examined into, previous to putting the same into the ballot box; or if any inspector, judge, or clerk of an election, shall make, or place any mark or device on any folded ballot, which has been handed in to the board of judges by any elector, with a view to ascertain the name of any person or persons for whom such elector shall have voted at any such election; or if any inspector, judge, or clerk of an election, without the consent of the elector, shall disclose the name of any person or persons which such inspector, judge, or clerk shall have fraudulently or illegally discovered to have been voted for by such elector, at any election, every such inspector, judge, or clerk of an election, so Penalty on inspector, judge, and clerk, examining ballot, marking same, or disclosing the names thereon.

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offending against any of the provisions of this section, shall be fined, upon conviction thereof, in any court of competent jurisdiction, in any sum not less than five nor more than fifty dollars.

Penalty on officers for neglect of duty. *Carter* v. *Harrison and another.* 5 Blackf. 138.

SECT. 161. If the secretary of state, or any inspector, judge, board of judges, board of canvassers, or clerk of an election, clerk of the circuit court, or marshal, on whom any duty is enjoined in this chapter, shall be guilty of any wilful neglect of such duty, or of any corrupt or fraudulent conduct in the execution of any such duty, he or they so offending shall, upon due conviction thereof, be fined in any sum not exceeding five hundred dollars, to which may be added imprisonment in the county jail for any term of time not exceeding three months.

Secretary of state to certify to prosecutors the failure of clerks to perform duties herein required —such certificate to be prima facie evidence of such failure.

SECT. 162. It is hereby made the duty of the secretary of state, after the expiration of twenty days from and after each election for governor, lieutenant governor, and representatives in congress, to certify to the proper prosecuting attorneys any and all failures and omissions of the clerks of the circuit courts, in their respective circuits, to comply with the provisions of this chapter, in returning or certifying the returns or certificates of any such election to the office of said secretary of state; and every such certificate of the secretary of state, sealed with the state seal, shall be sufficient prima facie evidence of any such failure or omission herein specified, on the part of the clerk of the circuit court, in any trial of an indictment against him therefor.

Courts to give this article in charge to grand jury.

SECT. 163. It shall be the duty of the circuit courts of the respective counties to give the provisions of this article specially in charge to the grand juries of such counties.

Prosecuting attorneys shall present all violations to grand jury.

SECT. 164. It shall be the duty of the prosecuting attorney of each circuit court to present all violations of the provisions of this article, which may come to his knowledge, to the special consideration of the proper grand jury.

'Election,' what it shall mean.

SECT. 165. The word "election," wherever it occurs in this article, shall be construed to mean any election held pursuant to the provisions of this chapter, unless the contrary is clearly meant and intended.

CHAPTER 6.

OF THE DUTIES OF THE GOVERNOR, LIEUTENANT GOVERNOR, SECRETARY OF STATE, TREASURER OF STATE, AUDITOR OF PUBLIC ACCOUNTS, PUBLIC PRINTER, STATE LIBRARIAN, AND STATE AGENT.

ARTICLE 1. Of the governor and lieutenant governor.
ARTICLE 2. Of the secretary of state.
ARTICLE 3. Of the auditor of public accounts.
ARTICLE 4. Of the treasurer of state.

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ARTICLE 5. General provisions respecting the secretary and treasurer of state and auditor of public accounts.
ARTICLE 6. Of the public printing and the distribution of the laws and journals.
ARTICLE 7. Of the state librarian and state library.
ARTICLE 8. Of the state agent.

ARTICLE I.

Of the governor and lieutenant governor.

SECTION
1. General duties of the governor.
2. When to cause acts, &c. to be deposited in the office of secretary of state—shall inform house thereof.
3. May employ counsel to defend suits, when state is interested.
4. Expenses thereof and for recapturing fugitives to be paid.
5. Treasurer, secretary, and auditor to report defalcations and neglect of duty to the governor.
6. Who shall cause suit to be brought and prosecuted.
7. Compensation of lieutenant governor.

SECTION 1. The governor shall carefully and promptly transact all necessary business with the officers of the government, both civil and military, and discharge all duties which may be lawfully required of him. General duties of governor.

SECT. 2. He shall cause all acts and joint resolutions of the general assembly, which have become laws, or taken effect by his approval thereof, or otherwise, to be deposited in the office of the secretary of state without delay, and shall inform the house thereof in which such act or joint resolution originated. When to cause acts to be deposited in the office of secretary of state—shall inform house thereof.

SECT. 3. Whenever he shall receive notice of the commencement of any suit or proceedings between other parties, by which the rights, interests, and property of the state shall be liable in any wise to be affected, he may, if the public interests require it, employ such counsel, attorneys, or other person, as he may judge proper, to protect the rights and interests, and make every legal and equitable defence on behalf of the state against such suit or proceedings. May employ counsel to defend suits when state is interested.

SECT. 4. All expenses incurred under the last preceding section, and in taking care that the laws are faithfully executed, and in recapturing fugitives from the justice of this state to other states and territories, if the governor shall allow the same, shall be paid out of the moneys appropriated by the general assembly for such purposes. Expenses therefor and for recapturing fugitives to be paid.

SECT. 5. The treasurer and secretary of state and the auditor of public accounts shall respectively report to the governor all defalcations and all neglect of duty of any disbursing or collecting officer, or agent of the state, who is required to file his bond with either the said treasurer, secretary, or auditor; and, also, all failures to perform any undertaking made by any person with this state, whose bond, contract, or obligation is filed either with such secretary, treasurer, or auditor. Treasurer, secretary, and auditor to report defalcations and neglect of duty to governor.

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Governor to cause suit to be brought and prosecuted.

SECT. 6. Upon such report being made to the governor, he shall direct suit to be brought for any such default, neglect, failure, or non-performance, may employ counsel therefor, and cause all other necessary and proper matters and things to be done for the due prosecution of such suit.

Compensation of lieutenant governor Constitution, art. 4, sect. 18.

SECT. 7. The lieutenant governor, while he acts as president of the senate, shall receive for his services the same compensation which, for the same period, is allowed to the speaker of the house of representatives, and no more; and during the time he administers the government as governor, he shall receive the same compensation which the governor would receive and be entitled to, and no more.

ARTICLE II.

Of the Secretary of State.

SECTION
8. Secretary of state shall give bond.—Its condition.
9. To be approved by governor.—Filed in recorder's office.—Copy to be evidence.
10. Shall keep and preserve certain papers, bonds, &c.
11. Certified copies of records, acts, &c. deposited with secretary, to be evidence.
12. 1. Shall register and attest acts of governor.—Affix seal to attestations, commissions, pardons, &c. 2. Lay before the general assembly papers, &c. relating to acts of governor. 3. Office open to inspection of committee. 4. Furnish information to governor when required. 5. Perform all other duties enjoined.
13. Shall give copies of all papers, &c., on fees being paid.
14. Shall cause the original laws, &c. of each session to be bound.
15. 1. Shall deliver to state printer copies of laws, &c. with marginal notes. 2. Also, index to laws, journals, &c. 3. Superintend printing. 4. Superintend stitching and binding. 5. Pack and deliver laws and journals to distributors.

SECTION
16. Shall retain one copy of laws carefully compared with original.—Note errors, and append his certificate thereto.
17. Shall dispose of and distribute the laws of congress: 1. Six copies to state library. 2. To each judge of supreme court, one copy. 3. To each county, two copies—one of which for county library.
18. Shall transmit a supply of laws and of Blackford's reports to new counties.
19. Shall transmit copies of statutes, &c. to, 1. Each state, two copies. 2. Each department of general government, land office, and library of congress, two copies. 3. Each university, one copy. 4. Also, one copy of Blackford's reports to each.
20. Shall record the time when the laws are deposited in the several counties.
21. When he may appoint a deputy, and what duties deputy may perform.
22. During what days and hours his office shall be open.

Secretary of state to give bond—its condition.

SECT. 8. The secretary of state, before entering upon the discharge of any of the duties of his office, shall make and execute his bond to the state of Indiana, in the penal sum of two thousand dollars, with at least two sufficient sureties, condi-

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tioned for the faithful performance and discharge of the several duties and trusts imposed upon him by the constitution and laws of this state.

To be approved by governor, and filed in recorder's office; certified copy to be evidence.

SECT. 9. Said bond and sureties shall be approved by the governor, and such bond shall be by him deposited in the recorder's office of Marion county, and there recorded: and a copy of such bond, duly certified by said recorder, shall, in all suits that are or shall be brought against said secretary, be evidence equally and in like manner as the original bond.

Secretary of state to keep and preserve certain laws, papers, bonds, &c.

SECT. 10. Said secretary of state shall have the custody of, and carefully preserve,

1. The enrolled copy of the constitution of the state of Indiana.

2. The description of the state seal.

3. The manuscripts containing the enrolled acts and joint resolutions of the general assembly and all the books, records, parchments, maps, registers, and papers now deposited, or that may hereafter be deposited, to be kept in his office.

4. All deeds and conveyances, except mortgages, belonging to the state of Indiana.

5. All official bonds of officers approved by the governor, except the bond of such secretary.

6. All written contracts to which the state is a party, unless required to be deposited elsewhere.

Copies of acts, bonds, &c. deposited with secretary, certified by him, to be evidence.

SECT. 11. All copies of any records, deeds, laws, acts, official bonds, registers, and papers, or such parts thereof as shall be necessary, deposited by authority of law, to be kept in his office, duly certified and sealed by the secretary, with the state seal, shall, in all cases, suits, and proceedings, be evidence equally and in like manner as the original thereof.

Secretary of state shall register and attest acts of governor: affix seal to attestations, commissions, pardons, &c. (1.) To lay before general assembly papers, &c. relating to acts of governor. (2) Office open to the inspection of committee.

SECT. 12. It shall be the duty of the secretary of state,

1. To keep a fair register of, and attest all the official acts and proceedings of the governor, and affix the seal of state with such attestations to all commissions, pardons, and other public instruments to which the signature of the governor is required.

2. To lay all papers, minutes, and vouchers, relative to the official acts and proceedings of the governor, before either house of the general assembly, when required by such house.

3. To permit all the books, bonds, deeds, conveyances, registers, papers, accounts, and transactions of his office, to be open at all times to the inspection and examination of any committee of either branch of the general assembly.

To furnish information to the governor when required.

4. To furnish information in writing upon any subject relating to the duties of his office, to the governor, whenever required.

To perform all other duties enjoined

5. And to perform all such other duties as may be enjoined upon him by the constitution and laws of this State.

Shall give copies of all papers, &c., on fees being paid

SECT. 13. The secretary of state shall furnish on demand to any person paying the proper legal fee or fees therefor, a duly certified copy of all or any part of any law, act, record,

(1) See const., art. 4, sect. 21; also, art. 11, sect. 9. (2) Const., art. 4, sect. 21.

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PART 1.

public register, public document, or other instrument of writing on file, or deposited pursuant to law, to be kept in his office, or in the state library, and of which a copy may be properly given.

To cause the original laws, &c. of each session to be bound.

SECT. 14. Immediately after the adjournment of each session of the general assembly, the secretary of state shall cause the original laws, joint resolutions, and memorials passed and adopted at such session, to be bound together, with substantial leather binding, in a volume or volumes of such size as he may find proper and convenient, and shall cause the title thereof with the session at which the same shall have been passed, to be written or printed on the back of such volume or volumes.

To deliver to state printer copies of laws, &c. with marginal notes.

SECT. 15. It shall also be the duty of the secretary of state,

1. To deliver to the state printer, at the earliest day practicable, copies of all acts, joint resolutions, and memorials, as they are passed or adopted by the general assembly, with proper marginal notes to the general laws, so as to enable said printer to complete the printing thereof within the time required by law.

To make and deliver to printer index to laws, journals, &c.

2. To prepare and deliver to said printer, as soon as it may be necessary for the like purpose, a properly digested index of said laws, joint resolutions, and memorials, and also of the journals and documentary journals of the respective houses.

To superintend printing.

3. To superintend the printing specified in this section, and the correction of the proof sheets.

To superintend the stitching and binding.

4. To superintend the stitching together and binding of said laws, resolutions, and journals, in the form and manner in which the same is required by law to be done.

To pack and deliver laws and journals to distributers.

5. To cause the proper number of said laws, journals, and documentary journals, for the respective counties, to be packed safely in convenient boxes, and the same to be delivered, without delay, to the persons employed to transport them to said counties.

To retain one copy of laws, carefully compared with original, noting errors, and to append his certificate thereto.

SECT. 16. He shall deposit in his office one copy of the laws, both general and local, printed by the state printer; having first examined and compared the same with the original laws on file, and noted at the end of each act, any errors or omissions that may be found in the printed copy; and shall cause the title thereof, with the session at which the same shall have been passed, to be written or printed on the back of such volume; and shall append thereto a certificate of the correctness of such volume, embracing the corrections of the errors and omissions which he may have noted.

How to dispose of and distribute laws of congress.

SECT. 17. Said secretary shall dispose of and distribute the laws of congress received by the state to be disposed of, as follows, to-wit:

Six copies for state library.

1. Six copies of said laws shall be bound and placed in the state library.

One copy to each judge of the supreme court.

2. A copy shall be delivered to each judge of the supreme court for his use, and the use of his successors in office.

Two copies to each county—one of which for co. library.

3. Two copies shall be sent with the laws of this state to the clerk's office of each county, one to be kept by such clerk

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for the use of the courts of his county, and the other to be placed in the county library.

Shall transmit a supply of laws and Blackford's reports to new counties.

SECT. 18. Said secretary shall be authorized to transmit to such new counties as may be organized, to the care of the clerk of the circuit court, as many copies of the laws of this state as may be necessary for the supply of the officers of such county; and also the number of sets of Blackford's reports allowed by law to such county.

Shall transmit copies of the statutes.

SECT. 19. In addition to the statutes required by law to be distributed, the said secretary shall put up in a safe manner, and transmit annually, under the direction of the governor, the statutes of each session, as follows, to-wit:

To each state two copies.

1. To each of the several states in the Union, two copies.

To department of general government, land office, and congressional library, two copies each.

2. To each of the several departments of the general government, and also to the general land office, and the congressional library, two copies each.

3. To each university and college in the state of Indiana, one copy.

Each university, one copy. Also, copies of Blackford's reports to the same.

4. To each state, department, office, university, and college, specified in this section, one copy of the reported decisions of the supreme court of Indiana.

To record the time when laws are deposited in the several counties.

SECT. 20. The secretary of state shall cause to be entered of record in his office the date when the laws are annually received at the respective clerk's offices in the several counties, as the same shall appear from the receipts given by said clerks, of the reception of said laws; and his certificate under the seal of the state, shall be evidence of the date, at which such laws were thus received in any of the counties of this state.

When secretary may appoint a deputy, and what duties he may perform.

SECT. 21. Whenever the secretary of state shall, by reason of sickness, necessary absence, or inability, be prevented from discharging the duties of his office in person, he shall have power, under his hand and seal, to appoint a deputy, who may and shall do, execute, and perform, all the duties belonging to the office of secretary of state, except such duties as the secretary may be required to perform in conjunction with the treasurer and auditor of state, or either of them.

During what days and hours he shall keep his office open.

SECT 22. The secretary of state, or his deputy, shall attend at the office of such secretary to transact business, every day in the year, Sundays and the fourth of July excepted, from the hours of ten o'clock of the forenoon until three o'clock of the afternoon.

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ARTICLE III.

Of the auditor of public accounts.

SECTION
23. Auditor shall give bond—how approved—its amount and condition.
24. His duties: 1. To keep all accounts. 2. Liquidate accounts of county treasurers, collectors, and receivers, and certify balance. 3. Keep accounts of revenue and expenditure. 4. Require settlements of all debtors. 5. Examine all claims on treasury—no moneys to be refunded without his statement. 6. Prosecute suits in behalf of the state. 7. Superintend collection of money, employ counsel, &c. 8. Draw warrants on treasury: warrants to be numbered and refer to law. 9. Furnish information to governor when required. 10. Superintend fiscal concerns—furnish forms for assessors, &c. 11. Keep all books, &c., not otherwise provided for. 12. Suggest plans for improvement, &c., of revenue. 13. Report to general assembly. 14. Perform all other duties required.
25. Shall require statements from all persons receiving or disbursing public money, &c.
26. When accounts are presented, may examine party or witnesses on oath.
27. Shall deliver warrant to person entitled to draw money from treasury.
28. Shall Keep record of warrants—how—entries to be carried into general book of accounts.

SECTION
29. Officer neglecting to report or settle, auditor to state his acconnt and charge ten per cent. and interest.
30. Officer failing to pay, auditor shall sue.
31. Copy of account certified by auditor, to be evidence without proof of signature.
32. Party sued shall pay cost in all cases except, &c.
33. Party sued to pay cost if he has failed to produce his evidence to auditor before settlement.
34. Vouchers to be numbered, filed, and preserved.
35. Any other remedy may be pursued by state for recovery of debts or establishment of rights.
36. All deeds, &c., maps, &c., to be deposited with auditor unless otherwise specially directed.
37. All papers, &c., belonging to his office, to be delivered by those having them.
38. Delivery may be required on oath.
39. Penalty for refusing to deliver or make oath, as in the two preceding sections required.
40. Auditor shall procure tract books—what to contain.
41. Also a map—what to contain.
42. Shall transmit copies of tract books and map to county auditors.
43. His books, office, &c., to be open to inspection of committees and governor.

Auditor shall give bond—how approved—its amount and condition.

SECT. 23. The auditor of public accounts, before entering upon the duties of his office, shall give bond, with such sureties as shall be approved of by the governor, in the penal sum of ten thousand dollars, conditioned for the true and faithful performance of the duties enjoined and required by law, to be performed by such auditor, and for the safe delivery to his successor in office of all books, papers, documents, maps, vouchers, and other effects belonging or appertaining to the said office of auditor.

Duties.

SECT. 24. It shall be the duty of the said auditor:

To keep all accounts.

1. To keep and state all accounts between the state of Indiana and the United States, or any state or territory, or any individual, or any public officer of this state indebted to the

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ARTICLE 3

state or entrusted with the collection, disbursement, or management of any moneys, funds, or interest arising therefrom, belonging to the state, of every character and description whatsoever, where the same are derivable from, or payable into, the state treasury.

To liquidate accounts of county treasurers, collectors, and receivers, and certify balances.

2. To examine and liquidate the accounts of all county treasurers and other collectors and receivers of all state revenues, taxes, tolls, and incomes, levied or collected by any act of the general assembly and payable into the state treasury, and certify the amount or balance to the treasurer of state.

To keep accounts of revenue and expenditure.

3. To keep fair, clear, distinct, and separate accounts of all the revenues, funds, and incomes of the state; and also all expenditures, disbursements, and investments thereof, showing the particulars of every expenditure, disbursement, and investment.

To require settlement of all debtors.

4. To examine, adjust, and settle the accounts of all public debtors for debts due to the state treasury, and require all such persons or their legal representatives, who may be indebted to the state for moneys received or otherwise, and who shall not have accounted therefor, to settle their accounts.

To examine all claims on the treasury.

5. To examine and liquidate the claims of all persons against the state in cases where provision for the payment thereof shall have been made by law; and where no such provision, or an insufficient one, has been made, to examine the claim and report the facts, with his opinion thereon, to the legislature; and no allowance shall be made to refund moneys from the treasury without his statement either for or against the justice of the claim.

No moneys to be refunded without his statement.

To prosecute all suits in behalf of the state.

6. To institute and prosecute, in the name of the state, all proper suits and proceedings at law or in equity for the recovery, in the most speedy and effectual manner, of any debts, dues, moneys, incomes, or property belonging to the state, or for the establishment or ascertainment of the rights, liabilities, or security of the state concerning the same.

To superintend collection of money, employ counsel, &c.

7. To direct and superintend the collection of all moneys due to the state, and employ attorneys and counsel to prosecute all suits and proceedings, instituted at the instance of said auditor on the behalf of the state.

To draw warrants on treasurer—warrants to be numbered and refer to law.

8. To draw warrants on the treasurer for all moneys directed by law to be paid out of the treasury to public officers, or for any other object whatsoever, as the same may become due and payable; but no warrant shall be drawn unless authorized by law; and every warrant shall be properly numbered and refer to the law under which it is drawn.

To furnish information to governor when required.

9. To furnish to the governor, on his requisition, information in writing upon any subject relating to the duties of said office.

Constitution, art. 4, sect. 11.

To superintend fiscal concerns—furnish forms for assessors, &c.

10. To superintend the fiscal concerns of the state, and secure their management in the manner required by law; and furnish proper forms to the assessors, treasurers, collectors, and auditors of counties, as the same may be found expedient or necessary.

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PART 1.

To keep all books, property, &c., not otherwise provided for.

11. To keep and preserve all public books, records, papers, documents, vouchers, and all conveyances, leases, mortgages, bonds, and all securities for debts, moneys, or property, and all accounts and property of any description belonging or appertaining to his office and also to the state of Indiana, where no other provision is made by law for the custody, control, or safe keeping of the same.

To suggest plans for improvement, &c. of revenue.

12. To suggest plans for the improvement and management of the public revenues, funds, and incomes.

To report to general assembly.

13. To report and exhibit to the general assembly at its annual meeting, a complete statement of the revenues, taxables, funds, resources, incomes, and property of the state known to his office, and of the public revenues and expenditures of the preceding fiscal year, with a detailed estimate of the expenditures to be defrayed from the treasury for the ensuing year, specifying therein each object of expenditure, and distinguishing between each object of expenditure and between such as are provided for by permanent or temporary appropriations, and such as require to be provided for by law; and showing also the sources and means from which all such expenditures are to be defrayed, and the probable deficiencies of the same; and,

To perform all other duties required of him by law.

14. Perform all such duties as may, from time to time, be required of him by law.

To require statements from all persons receiving or disbursing public money, &c.

SECT. 25. The said auditor shall, from time to time, require all persons receiving moneys or securities, or having the disposition, management, or disbursement of any property, money, securities, or funds of the state, of which an account is kept in his office, to render statements thereof to him; and all such officers or persons shall render such statements at such time and in such form as shall be required.

When accounts are presented, may examine party or witnesses on oath.

SECT. 26. When the account of any person having a claim against the state, is presented to the auditor for adjustment and settlement, he shall have power to swear and examine such person and any other as witnesses before him, touching the said account, and to require such person or persons to answer orally or by deposition, as to any facts relating to the justness of said account.

Shall draw warrant in favor of party entitled to money.

SECT. 27. Whenever any person is entitled to draw or receive any money from the state treasury, the auditor shall draw a warrant in his favor on the treasurer of state and deliver the same to the party entitled thereto.

Record of warrants—how kept—entries to be carried into general book of accounts.

SECT. 28. The said auditor shall enter in a proper book provided for that purpose, every warrant he draws on the treasury, in the order he issues the same, in such manner as to show the date thereof, in whose favor drawn, the nature of the claim upon which it is founded, with a reference to the law under which it is drawn; and shall carry such entries into a book of general accounts, under separate and distinct heads.

Officer neglecting to report or settle, auditor to state his ac-

SECT. 29. Whenever any officer or other person has received moneys belonging to the state, or has been entrusted with the collection, management, or disbursement of any mo-

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neys, funds, or interest accruing therefrom, belonging in like manner to, or held in trust by the state, and shall fail to render an account thereof to, and make settlement with, the auditor within the time prescribed by law, or, where no particular time is prescribed, shall fail to render such account and make settlement, upon being required so to do by the auditor, within ten days after such requisition, it shall be the duty of said auditor to state an account against such officer or person, charging ten per cent. damages, and interest at the rate of six per cent. per annum, from the time of failing to render an account and settle as aforesaid.

count and charge ten per cent. and interest.

SECT. 30. Whenever any officer or other person shall render an account to, and make settlement with the auditor, as in this article required, and shall fail to pay over to the treasurer of state the amount or balance to be paid by such officer or person into the state treasury, or to such person as shall be entitled by law to receive the same, within the time prescribed by law, or, if no time is prescribed by law, then within the time specified by such auditor, said auditor, upon being notified by said treasurer, or otherwise, of such failure, shall cause suit to be instituted for the recovery of the amount thus due and unpaid.

Officer failing to pay, auditor to sue.

SECT. 31. A copy of the account, in such case made out and certified by the said auditor, shall be sufficient evidence to support an action in any court of competent jurisdiction for the amount or balance stated therein to be due, without proof of the signature or official character of such auditor; subject, however, to the right of the defendant to plead and give in evidence, as in other actions, all such matters as shall be legal and proper for his defence or discharge.

Certified copy of stated account to be evidence without proof of signature.

SECT. 32. The party so sued shall be subject to the costs and charges of suit, whether the ultimate decision be against him or in his favor, except in cases in which he shall have rendered a true account, and shall also have fully paid the full amount to the proper person authorized to receive the same, before the commencement of such suit, or unless suit is brought against the representative of the original party.

Party sued to pay cost in all cases except, &c.

SECT. 33. If any defendant in any suit prosecuted at the instance of the auditor, under the provisions of the last preceding section, shall, upon the trial, give any evidence which existed prior to the time of such adjustment and settlement of his accounts, and which was not produced to such auditor at the time of said settlement, such defendant shall be subject to the costs and charges of such suit, whether the ultimate decision shall be against him or in his favor.

Party sued to pay costs if he has failed to produce his evidence to auditor before settlement.

SECT. 34. All papers, vouchers, and proofs, upon which said auditor shall issue any warrant for the payment of money, shall be numbered and filed by said auditor, and preserved carefully in his office.

Vouchers to be numbered, filed, and preserved.

SECT. 35. Nothing contained in the provisions of this article shall be so construed as to impair or affect any legal or equita-

Other remedies may be used by the state for re-

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PART 1.

covery of debts and establishment of rights.

ble remedy which might be used if such provisions were not in force, for the recovery of any debt due, or to become due to the state of Indiana, or for the establishment of any right, interest, or claim to any moneys, funds, or interest arising therefrom, or secureties therefor.

All deeds, &c., maps, &c. to be deposited with auditor, unless otherwise specially directed.

SECT. 36. All deeds, leases, mortgages, bonds, and other secureties for debts, moneys, or property, and all maps, profiles, and documents relating to the property or public works belonging to the state of Indiana, unless otherwise specially directed, shall be deposited with and kept by the auditor.

All papers, &c belonging to his office to be delivered to him by those having them in possession.

SECT. 37. Any person or persons having in his or their possession any leases, mortgages, bonds, or securities for debts, moneys, or property belonging to the state, or any maps, profiles, or documents relating to the public works or property of the state, or any public books, records, papers, documents, vouchers, accounts, or property of any description, belonging or appertaining to the office of said auditor, or to the custody of which he is entitled by law, or for the custody and safe keeping of which there is no provision made by law, are hereby authorized and required to deliver the same to the said auditor, who is hereby empowered to demand and receive the same, and give full and clear acquittances for the receipt thereof.

Delivery may be required on oath.

SECT. 38. When the said auditor shall demand of any person or persons specified in the preceding section, the delivery of any of the articles embraced therein, he may in his discretion require the same to be done on the oath of such person or persons, which oath said auditor is hereby authorized to administer.

Penalty on persons refusing to deliver or make oath as in the two preceding sections required.

SECT. 39. Such person or persons refusing or neglecting to comply with the provisions of the two last preceding sections, in making such delivery to said auditor on reasonable demand, or refusing to take the requisite oath when thereunto legally required, shall, upon conviction thereof, upon presentment or indictment in any court of competent jurisdiction, be fined in any sum not exceeding five hundred dollars.

Auditor to procure tract books, to contain what.

SECT. 40. The said auditor shall annually procure from the different land offices within the state, including canal and Michigan road land offices, a complete register, catalogue, and description of each and every tract of land of which such register and description has not been already procured, and which has been or may hereafter be sold at such land offices, showing the divisions in which such tracts of land may have been sold, and noting the whole number of acres in each division, subdivision, and tract sold, stating particularly the date of entry, and whether a final certificate or receipt has been given to the purchaser therefor.

Also maps.

SECT. 41. The said auditor shall also procure from the surveyors, or general land office, a complete map of all said lands, in township form, on a scale of one inch to the mile, particularly showing on the face thereof the minutest subdivisions made to each section by the surveyor general, and the number of each

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lot where tracts are numbered, and the number of acres in each subdivision.

Transmit copies of tract books and maps to county auditors.

SECT. 42. The said auditor, on procuring such registers, catalogues, descriptions, and maps, shall annually hereafter, on or before the first day of January, make out and forward to the county auditors of the respective counties, a copy of each of said registers, catalogues, descriptions, and maps of lands contained in any such county, to which the same has not been heretofore transmitted, which, when received by such county auditor, shall be filed and preserved in his office.

Books, &c. open to inspection of committees and governor.

SECT. 43. All the books, papers, files, letters, and transactions pertaining to the office of the said auditor, shall be open to the inspection of a committee of the general assembly, or either branch thereof, and also to the inspection of the governor.

ARTICLE IV.

Of the treasurer of state.

SECTION

44. Treasurer to give bond—to be approved by governor—penalty and condition.
45. What money shall be paid into treasury.—1. Taxes. 2. Money borrowed. 3. Proceeds of bonds heretofore sold. 4. Proceeds of lands, &c. and for internal improvement purposes. 5. Trust funds. 6. All funds not otherwise provided for. 7. Interest, &c. derived from above funds. 8. Bank and other dividends appropriated to internal improvement debt. 9. Tolls, water rents, &c.
46. Treasurer shall, 1. Receive all money to be paid into the treasury. 2. Keep books of account of the same. 3. Also of all moneys paid out. 4. Make monthly statements of money received and paid, with the date and amount of all warrants paid. 5. Make annual report to the general assembly. 6. Permit his books, &c. to be inspected by the governor and committees of either house. 7. To perform all other duties enjoined by law.
47. Treasurer to give receipt for money and deliver same to auditor, whose receipt therefor shall be delivered to payer.
48. Money deposited in bank shall be to the credit of the treasurer of state.
49. And may be drawn for by him.
50. Treasurer shall promptly pay all warrants out of the proper fund.

Bond of treasurer to be approved by governor; penalty and condition.

SECT. 44. The treasurer of state, before entering on the duties of his office, shall give bond and security in the penal sum of one hundred thousand dollars, with such sufficient sureties as shall be approved by the governor, conditioned for the faithful discharge of the duties of his office required of him by law to be performed; and the accounting for and paying over of all moneys which may be received by him from time to time by virtue of his said office; and for the safe delivery to his successor in office of all books, moneys, vouchers, securities, evidences of debt, and effects, belonging to his said office.

What money shall be paid into the treasury.

SECT. 45. The moneys derived from the following sources shall be paid into the state treasury:

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PART 1.

Taxes.

1. All moneys derived from taxes assessed and collected under any law of the state, providing for the assessment and collection of a revenue for general or state purposes.

Money borrowed.

2. All moneys borrowed or procured on the credit of the state, by authority of law, by the treasurer or any other authorized agent of the state.

Proceeds of bonds heretofore sold.

3. All moneys received on account of the sale of state bonds, heretofore disposed of for internal improvement purposes, or to increase the capital stock of the state bank.

Proceeds of lands, &c. for internal improvement purposes.

4. All moneys and interest thereon, arising from the sale of lands, lots, or other property belonging to, or held in trust by the state, for the purpose of prosecuting any work or works of internal improvement.

Trust funds.

5. All moneys arising from the sale of seminary, college, or saline lands, or reservations, or other lands belonging to or held in trust by the state.

All other funds not otherwise provided for.

6. All moneys and funds belonging or loaned to, or held in trust by the state, where no other disposition thereof is made or required by law.

All interest, profits, and incomes from any of the above funds.

7. All interest, profits, and income, arising or derived from any moneys or funds specified in this section.

All bank and other dividends appropriated to internal improvem't debt.

8. All dividends arising from bank or other stock appropriated to the payment of any part of the interest of the public debt incurred for internal improvement purposes.*

Tolls, water rents, &c.

9. All moneys arising from tolls, duties, water rents, and privileges on any of the works of internal improvement of this state.

Treasurer shall receive all moneys required to be paid into treasury.

SECT. 46. It shall be the duty of the treasurer of state,

1. To receive of the several county treasurers, collectors of the public revenue, and of all other officers and persons, all moneys whatsoever, which are required by any act or acts of the general assembly to be paid into the treasury of this state.

To keep books of account for all moneys received.

2. To keep in books provided for that purpose, correct and separate accounts of all the moneys received by him by virtue of his office of treasurer.

Also of all moneys paid out.

3. To keep in like manner correct accounts of all moneys paid by him out of the treasury.

Make monthly accounts of moneys received and paid, with date and amount of all warrants.

4. To make out monthly accounts of all moneys received by him into the treasury, and all moneys by him paid out of the treasury, and a list showing the date and amount of the warrants on which such payments have been made, and deliver the same monthly to the auditor.

Annual report to general assembly.

5. To lay before the general assembly annually, during the first week of the session, a full exhibit and statement of all moneys received by him into and paid out of the treasury, showing under separate and appropriate heads on what account or from what sources received, and for what particular object or service the same has been paid out by him.

Books, &c. to be open to inspection of governor and committees of gen'l assembly.

6. To permit the books, papers, and transactions of his office to be open at all times to the inspection of the governor, to

*By act of 1813, page 53, this bank stock was authorized to be cancelled.

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either branch of the general assembly, or to any committee thereof authorized by law, or by the branch to which it belongs, to examine said office; and

7. To do and perform all other duties which may at any time be required of him by law.

To perform all other duties enjoined by law.

SECT. 47. When any public debtor shall pay any sum or sums of money into the public treasury, the treasurer, on receiving the same, shall make out a receipt for the amount, and deliver the same to the auditor of public accounts, whose duty it shall be to give said treasurer a receipt therefor; and said treasurer shall deliver the auditor's said receipt to the person paying the money therein specified.

Treasurer to give receipt for money, and deliver same to auditor, who shall give his receipt therefor.

SECT. 48. All moneys of the state, deposited by any public debtor in any bank for the use or to the account of the state, except when otherwise directed by law, shall be deposited to the credit of the treasurer of state.

Moneys deposited in bank shall be to the credit of the treasurer.

SECT. 49. Any moneys thus deposited shall be subject to be drawn for by the treasurer on his check as such treasurer.

Same may be drawn for by the treasurer.

SECT. 50. The treasurer of state shall promptly pay all warrants drawn on him by the auditor of public accounts out of the proper moneys appropriated by law for the payment of the service or demand, on account of which such warrant was allowed and issued.

Shall promptly pay warrants out of the proper fund.

ARTICLE V.

General provisions respecting the secretary and treasurer of state, and auditor of public accounts.

SECTION

51. Annual examination of the auditor's and treasurer's offices by committee.
52. Manner in which such examination shall be made.
53. If money has been misapplied, to report the same.
54. Committee shall report the amount received, paid out, and on hand; same to be published with the laws.
55. Vouchers to be cancelled, and how.
56. Secretary, treasurer, and auditor, when to furnish printer with their annual reports—number of copies to be printed—to whom and when to be delivered.

SECTION

57. Reports, how to be disposed of by secretary.
58. Seals to be procured for secretary, treasurer, and auditor's offices—use thereof.
59. Secretary, treasurer, and auditor to make contracts for fuel and stationary—manner thereof—report to be made.
60. Notice thereof to be given.

SECT. 51. There shall be a committee appointed annually by the general assembly, to examine into the state of the offices of the auditor of public accounts and treasurer of state.

Annual examination of treasurer and auditor's offices by committee

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PART 1.

Manner in which committee shall perform that duty.

SECT. 52. All the books, accounts, and vouchers of both said offices shall be laid before said committee, and by them examined and compared; the amount of money then in the treasury shall be counted, and the account of the warrants of the auditor and the payments made by the treasurer shall be compared; and the said committee, in making such examination, shall mark, without defacing the same, all receipts, accounts, books, vouchers, and warrants, which shall have been examined and compared by such committee, and upon which said treasurer might be charged with the reception or misapplication of any funds which may have come into his hands.

If any misapplication is discovered, to report the same.

SECT. 53. If said committee shall discover that any money has been misapplied by said treasurer, they shall report the same to the general assembly.

Shall report the amount received, paid out, and on hand.

SECT. 54. The said committee shall prepare a succinct and accurate statement of all the moneys received into and paid out of the treasury, and for what purposes; and also the amount of money on hand, and report the same to the general assembly; and such statement shall be attached to and published with the laws of the session of the general assembly at which such report shall have been made.

Same to be published with the laws.

Vouchers to be cancelled, and how.

SECT. 55. Said committee shall annually after their said examination and allowance of all the vouchers and proofs upon which the auditor shall have issued any warrant upon the treasury, cancel the same by cutting or otherwise, but so as not to render them illegible.

Secretary, treasurer, and auditor, when to complete and furnish printer with their reports.

Number of copies to be printed, and to whom and when to be delivered.

SECT. 56. It shall be the duty of the secretary and treasurer of state and auditor of public accounts, to make out and complete their reports at least fifteen days before the sitting of the general assembly, and furnish the state printer with a copy thereof, who shall print fourteen hundred copies of each report, under the inspection of the officer making the same; and when so printed, the same shall be delivered to the secretary of state within three days after the commencement of the session.

Reports, how to be disposed of by secretary.

SECT. 57. The secretary shall retain five hundred copies of each of said reports for the documentary journal authorized by law; and shall forthwith cause the remaining copies to be delivered, one third to the senate and the balance to the house of representatives.

Seals to be procured for secretary, treasurer, and auditor's offices—use thereof.

SECT. 58. The secretary and treasurer of state and auditor of public accounts shall each procure a seal for their respective offices, with a plain device, with which all documents, papers, and instruments shall be sealed, which, by the provisions of any law, are required to be sealed by such officer.

Secretary, treasurer, and auditor to make contracts for fuel and stationary, when and how.

SECT. 59. The secretary and treasurer of state and auditor of public accounts, or a majority of them, are hereby required annually, sixty days before the first day of each and every general assembly, to close a contract or contracts with some person or persons, for furnishing the necessary firewood or other fuel, and stationary, for the use of both houses of the

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general assembly; and shall enter into bonds, as in case of contracts for printing; which contracts shall be severally reported to the general assembly within three days after the commencement of each session by the secretary of state. ARTICLE 6.

SECT. 60. Previous to entering into any such contract or contracts, the secretary, treasurer, and auditor of public accounts shall give notice thereof in such way and manner as they, or a majority of them, shall deem most advisable. Notice to be given thereof.

ARTICLE VI.

Of the public printing, and the distribution of the laws and journals.

SECTION
61. Public printer, how and when elected —his bond, and condition thereof.
62. When another may be employed to do the work.
63. Prices of work.
64. All public printing subject to these rules.
65. Work, by whom estimated and how allowed and paid for.
66. Secretary of state to make indexes—how paid therefor.
67. Documentary journal, what to contain—certain documents not to be printed in house or senate journal.
68. Printing certain documents not to be twice paid for.
69. Five hundred copies of documentary and other journal—how disposed of.

SECTION
70. How sent to those entitled thereto.
71. When to be printed and delivered—penalty for delay.
72. Number of copies of laws to be printed and how distributed.
73. The same.
74. Special acts, how to be distributed and disposed of.
75. Contract for distributing laws and journals—bond for performance—when and how paid for.
76. Penalty for failing to deliver.
77. Clerk to record time of receiving laws.
78. Surplus copies in clerk's office, how to be disposed of.

SECT. 61. There shall be elected triennially, counting from the month of January, one thousand eight hundred and forty-one, by the general assembly, on joint ballot, a state printer, who shall serve for three years, from and after the first day of August next after his election; and such printer shall, within twenty days after his said election, enter into bond with sufficient surety, to the satisfaction of the secretary and treasurer of state and auditor of public accounts, with condition for the prompt, accurate, and workmanlike execution of the public printing, and the faithful performance of all the duties required of him by law. Public printer, how and when elected; his bond, and condition thereof.

SECT. 62. In case of any inconvenient delay in the delivery of the work required by this act, or that may be required by either house, the auditor, treasurer, and secretary of state shall be authorized to employ any other person to execute any portion of the work herein provided for, and charge the excess, if When another may be employed to do the work.

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there be any, to the account of such printer guilty of such negligence and delay.

Prices of work.

SECT. 63. The prices to be paid to such public printer are hereby established, as follows: For composition, per thousand ems plain matter, forty-five cents; figure work, per thousand ems, sixty-five cents; rule and figure work, per thousand ems, eighty cents; press work per token, common forms, forty-five cents; broad-sides, per token, sixty cents; folding reports and bills, per thousand copies, on each signature, (distinct tables to be considered as signatures,) twelve and a half cents; stitching reports and bills, per hundred copies, twenty cents.

All public printing subject to these rules.

SECT. 64. All public printing done for or on account of the state, shall be subject to the provisions of the two last preceding sections of this article.

Work, by whom estimated, and how allowed and paid for.

SECT. 65. The secretary of state shall superintend all the printing done for the state, and see that the same is well executed; and shall measure and estimate the same, and certify, under his hand and the seal of his office, the amount and kind of work done, together with the cost; which certificate shall authorize the auditor of public accounts to audit the same, and the treasurer shall pay the amount out of any moneys of the state in his hands not otherwise appropriated.

Sec'y of state to make indexes; how paid therefor.

SECT. 66. It is hereby made the duty of the secretary of state to make out complete indexes to the documentary journal, and other journals, and of the general laws and special acts, and cause the same to be bound, in their appropriate volume; and he shall cause the documentary journal to be bound in boards, (called half binding,) also, the general laws in the same manner; the special acts, the journal of the senate and of the house, he shall cause to be bound in strong paper binding, for which he shall allow a reasonable compensation, to be certified, audited, and paid for, as is provided in the case of public printing.

Documentary journal, what to contain.

SECT. 67. A documentary journal shall be made and printed, consisting of two parts: the first part shall be composed of the governor's message, the annual reports of the secretary and treasurer of state, and auditor of public accounts, the board of directors of the state bank and branches, and the report of the committee of ways and means: The second part shall consist of all reports respecting the funds and debts of the state, and the works of internal improvement, and such other matters as the legislature, or either branch thereof, shall direct; but no document except the governor's message, and the report of the committee of ways and means, shall be printed in the journal of either house, if required by law or otherwise directed to be printed in the documentary journal.

Certain documents not to be printed in house or senate journals.

Printing certain documents not to be twice paid for.

SECT. 68. In all cases where either the senate or house directs any document or report to be printed and placed in the documentary journal, five hundred copies in addition to the number directed for the use of the house directing the same, shall be printed and handed to the secretary of state for the

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documentary journal; so that in no instance shall pay for composing the same matter be twice allowed. ARTICLE 6.

SECT. 69. The secretary of state shall annually cause five hundred copies of the documentary journal, in the manner before stated, and a like number of the senate and house journals, to be printed and disposed of as follows: To each member of the senate and house, and to each officer and clerk, one copy of the documentary journal, and one copy of the journal of their appropriate house; and to each organized county within the state, two copies of each of the aforesaid journals, one of which copies of each shall be deposited in the clerk's office of each of said counties, open for the inspection of any person, and the other copy of each in the county library; and in case there be no such county library, then in the clerk's office, for the benefit of such library, when organized; also, one copy to the governor, and one each to the secretary and treasurer of state, and auditor of public accounts, and to each of the supreme judges, and the clerk of the supreme court, and the balance shall be deposited and kept in the state library. Five hundred copies of documentary and other journals, how disposed of.

SECT. 70. The secretary of state shall, at the same time and in the same manner that the laws are distributed, distribute the journals, as provided in the foregoing sections of this article, and shall cause the journals for members of the general assembly to be directed to the county in which they reside, to be deposited in the clerk's office, subject to their order. How sent to those entitled thereto.

SECT. 71. The laws and journals of each session of the general assembly shall be printed by the public printer, and delivered to the secretary of state, within sixty days after the adjournment of the session of the general assembly; and in case of failure so to deliver any work as required by this act, such public printer shall be liable to a penalty of five dollars for each day's delay, which shall be deducted from his pay. When to be printed and delivered; penalty for delay.

SECT. 72. It shall be the duty of the secretary of state, so soon as the printing of the laws shall be annually done, to certify the fact that he has compared the printed with the enrolled acts, joint resolutions, and memorials, and found them correctly printed, which certificate shall be signed and dated by the secretary, and annexed in print to the volumes of the acts, joint resolutions, and memorials; and he shall cause to be printed in one volume the general laws, and in another volume the special and private acts, joint resolutions of a local or private nature, and memorials of the present and all future sessions of the general assembly to be denominated special acts, of which special acts there shall be printed one thousand copies; and the secretary shall cause to be printed annually, five thousand copies of the general laws and joint resolutions of a general nature, and shall annually distribute as follows, to-wit: To the governor, lieutenant governor, secretary, auditor, and treasurer of state, each, one copy; to the United States' judges, and district attorney for the state of Indiana, each one copy; the judges of the Number of copies of laws to be printed, and how distributed.

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PART 1.

supreme court, probate courts, and circuit courts, each one copy; to the circuit prosecuting attorneys, each one copy; to the several states and territories of the United States, such number of copies, not exceeding three, as may be received from each of them respectively; to the members of the senate and of the house of representatives, and to the secretaries and regular clerks thereof, each one copy, which shall be forwarded to each as hereinbefore provided in the case of the journals to members, except those directed to the states and territories, which the secretary shall send as he may think best.

Residue, how distributed.

SECT. 73. The residue of such copies shall be disposed of as follows: To the counties of Wayne and Dearborn, sixty copies each; to the counties of Washington, Jefferson, Marion, Henry, Rush, Montgomery, Putnam, Fountain, Parke, Tippecanoe, Clark, and Laporte, each fifty-five copies; to the counties of Franklin, Orange, Knox, Fayette, Union, Switzerland, Jackson, Lawrence, Monroe, Sullivan, Vigo, Gibson, Bartholomew, Posey, Ripley, and Decatur, fifty copies each; and all other counties, forty-five copies each; and the said volumes so to be delivered to each of the aforesaid counties shall be delivered to the clerks of the several counties, except in cases where there may be no clerk, in which case the same shall be delivered to the sheriff of such county, and the said volumes, when so delivered to such clerks or sheriffs, shall be distributed by such clerks and sheriffs, as follows, to-wit: To the associate judges, justices of the peace, clerk of the court, recorder of the county, sheriff, and coroner, each county commissioner, and county auditor, one copy each.

Special acts, how distributed

SECT. 74. The volumes of the special acts of each session shall be distributed and disposed of as follows, to-wit: To each member of the senate and house of representatives, one copy, and to each county in the state, six copies; to be forwarded as aforesaid, and preserved in the clerk's office of the respective counties, for the use of those concerned; and the remaining volumes to be preserved in the state library.

Contract for distributing laws and journals.

SECT. 75. The secretary and treasurer of state, and auditor of public accounts, or a majority of them, are hereby required annually hereafter to contract with some separate person or persons, for each judicial district in the state, to convey and deliver the several volumes of the aforesaid acts and joint resolutions and journals, to the several persons, counties, and places pointed out by this act; taking bond and security of the undertakers for the faithful performance of the contract; and so soon as such undertaker shall produce to the secretary of state the receipts of the several clerks or sheriffs authorized to receive the laws and journals aforesaid, setting forth that the proper number of volumes of the laws and journals have been delivered in good order, the said secretary shall then certify, under his hand and seal, that such undertaker has performed his contract, and the amount that is due to such undertaker for the same; which certificate of said secretary shall be a sufficient

Bond for performance.

When and how to be paid for.

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voucher for the auditor of public accounts to give such undertaker an audited warrant therefor; and the treasurer of state is hereby authorized to pay such warrant out of any money in the treasury not otherwise appropriated.

Penalty on contractors for failing to deliver laws.

SECT. 76. In all cases, when any person employed to distribute the laws and journals of this state shall fail or neglect to perform his duties agreeably to his contract, it shall be the duty of the secretary of state to cause suit forthwith to be commenced on such contractor's bond, and have the same prosecuted to final judgment; and it is hereby made the duty of the prosecuting attorney of the district where such suit shall be commenced, to attend and prosecute the same, for and on behalf of the state, and collect and pay over the amount recovered into the state treasury.

Clerk to record the time of receiving laws.

SECT. 77. It is hereby made the duty of the clerk of the circuit court of each county to make a record of the day and date of the reception of the acts and joint resolutions, as above authorized, in his office; and such record shall be deemed and taken as the time of the publication of the said laws within said county.

Surplus copies, how disposed of by clerk.

SECT. 78. In all counties where there may be surplus copies of the laws, either of this or any preceding or succeeding year, it shall be the duty of the clerk of each of such counties to deliver one of each of such surplus copies to each officer entitled to the laws, who has not previously had a copy of the same, on such officer applying therefor.

ARTICLE VII.

Of the state librarian, and state library.

SECTION

79. How and when elected—his duties.
80. Shall give bond and take oath.
81. Library, where to be kept and when open.
82. Who privileged to use library.
83. Librarian to establish rules for the use of books—copy to be set up—fines, how recovered—librarian may be witness, &c.
84. Librarian shall charge books taken out—make catalogues—report books lost.
85. Librarian to collect and pay over fines to treasurer and file his receipt with auditor.
86. Librarian shall have charge of state house—shall cleanse the same—During sessions of court, the marshal and sheriff of supreme court may have keys of court room.
87. Librarian shall keep fences around state house square—may mow and use the grass.
88. salary, when and how paid.
89. Four hundred dollars appropriated for annual increase of library.—Certain copies of laws to be bound and placed in library.
90. Penalty for permitting others to draw books in privileged persons' name.
91. Certain public documents, &c., to be collected and preserved.
92. Alteration and repairs of room to be made.

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PART 1.

SECTION
93. Librarian shall perform duties of agent of the town of Indianapolis, and make annual report thereof.
94. Room appropriated for the law library.
95. Certain laws and documents to be selected and put up in room south of library—residue how disposed of.
96. Librarian shall file and keep legislative papers.—Penalty for embezzling or taking away the same.
SECTION
97. Senate and house clerks shall hand over to librarian all papers as disposed of.
98. Librarian shall report his transactions under this article.
99. Penalty on librarian for improperly loaning or hiring books—how recovered and who shall prosecute.

How and when elected; his duties.

SECT. 79. There shall be elected triennially, in the month of January, counting from the month of January, 1841, by joint ballot of the general assembly, a state librarian, who shall hold his office for the term of three years, and shall be keeper of the state library, state house, state house square, and the governor's circle, and public buildings thereon, and all the furniture of said houses which is not in the care or keeping of any of the public officers of the state.

Shall give bond —when filed— and take oath.

SECT. 80. The librarian shall, before entering upon the duties of his office, give bond and security to the acceptance of the auditor, treasurer, and secretary of state, in the penal sum of two thousand dollars, conditioned for the faithful discharge of his duty as librarian, keeper of the state house and square, and other property entrusted to him; which bond shall be filed in the office of the secretary of state, and he shall also take an oath for the faithful discharge of his duty.

Library, where to be kept, and when open.

SECT. 81. The librarian shall keep the library in the room now occupied for that purpose in the state house, and shall keep the same in a neat manner, arranging the books in proper order, and take proper care of the same, preserving them from moulding and from moths: said library shall be kept open at all times during the session of the legislature, (Sundays excepted,) in each day, from nine o'clock in the morning until six in the evening, and on each and every Saturday during the recess, from eight in the morning until four in the afternoon of said day.

Who privileg'd to use library.

SECT. 82. Said library shall be for the use of the members of the legislature, the secretaries and clerks of each house, the officers of the several branches of the executive department of the state government, judges of the district and circuit courts of the United States, district attorney, judges of the supreme court of the state, the president judges of the circuit courts, adjutant and quarter master generals, principal and assistant engineers on the public works, and all officers of state whose appointment to office is vested in the legislature, or the governor and senate, attorneys of the supreme court, editors of newspapers, clergymen, and all other persons who have been at any time entitled by law to the use of books from such library, when any of them shall be at the seat of government.

Librarian to establish rules for the use of books—copy to

SECT. 83. It is further made the duty of said librarian, with the advice and consent of the auditor, treasurer, and secretary of state, to fix the time during which any authorized person

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ARTICLE 7.

may detain a book from said library; and further, to make and ordain from time to time, such rules and by-laws for the government of said library as will be best calculated to make the same useful to those interested, and a copy of such rules and by-laws shall at all times be set up in a conspicuous place in the library room, for the inspection of every visiter; and all fines and forfeitures accruing under and by virtue of such by-laws, shall be recoverable by action of debt, before any court having jurisjurisdiction of the amount, in the name of the state of Indiana, for the use of the state library; and in all such trials the librarian shall be a competent witness, and his entries, to be made as hereinafter directed, shall be prima facie evidence of the delivery of the book or books and the date of such delivery.

be set up—fines, how recovered—librarian a witness, &c.

SECT. 84. The librarian shall keep proper books, in which he shall make an entry of all books taken out, designating the name of the individual taking the same; also of the books returned, and of all fines and penalties assessed and collected under the provisions of this article, or the by-laws established for the government of the library: he shall also keep a catalogue of the books belonging to the library, and shall from time to time add to such catalogue a list of all books purchased for the use of said library; and he shall from time to time erase from such catalogue such books as may be lost or destroyed, and shall annually report to the legislature, (at the same time that the other state officers are required to report,) a full and complete statement of the condition of said library, naming the books lost or destroyed, if any there be, and the cost of such works, and the name or names of the individual or individuals to whom the same were charged, together with the fines assessed and collected.

Librarian to charge books taken out—make catalogues—to report books lost.

SECT. 85. It shall be the duty of the librarian to collect all fines and forfeitures accruing to the library, by suit or otherwise: the fines and forfeitures so collected shall be paid over to the treasurer of state, taking his receipt for the same, which receipt shall be filed in the auditor's office, who shall charge the same to the account of the treasurer, for the use of the library.

Fines to be collected by librarian, and paid over to state treasurer, and his receipt filed with auditor.

SECT. 86. The librarian shall have, during the recess of the sittings of the legislature, the keys of the state house and the care of the building; and he shall immediately after the adjournment of the legislature, take up the carpets in each of the rooms and dust the same, and sweep each of the rooms in a clean manner, and replace the carpets prior to the next sitting of the general assembly: provided, that during the sittings of the district and circuit courts of the United States, and supreme court of this state, it shall be lawful for him to give in charge to the sheriff of each of said courts, the key to the supreme court room, also that of the outer doors.

Librarian to have charge of state house—shall clean same, &c.

Sheriff of supreme court, and marshal, to have keys of court room when court is in session.

SECT. 87. The librarian shall keep the fence and gates around the state house square in good order, so as to prevent the entering of any kind of stock, other than that which would be necessary to deliver wood, or remove any article from within the square, which may be necessary for the good order of the

Librarian to keep up fences around state house square—may mow and use the grass.

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same; also to trim and prune the shrubs, and to remove any wild plant which is calculated to injure the grass plat of said yard, and he is hereby permitted to mow said grass plat, and apply the grass to his own use; and the expense of keeping the fence and gates in repair shall be an addition to his annual salary, to be audited and paid out of the treasury.

Salary, when and how to be paid.

SECT. 88. The librarian shall receive an annual salary of three hundred dollars, which shall be in full compensation for his services, as required by this article, to be paid quarterly out of the treasury, upon warrants drawn by the auditor.

Annual appropriation of $400 for increase of library—certain copies of laws, &c. to be bound and placed in library.

SECT. 89. There shall be expended annually, under the direction of the auditor, treasurer, and secretary of state, the sum of four hundred dollars, for the increase of the state library: they shall also procure the binding of copies of laws exchanged with states or territories, not exceeding three copies of any one state or territory; they shall also procure the binding of at least six copies of the laws and joint resolutions passed at each session of the legislature, also six copies of each of the journals of the senate and of the house of representatives: the laws required to be bound by this section shall be bound in full binding, and the journals in half binding, with leather backs.

Penalty for permitting others to draw books in privileged person's name.

SECT. 90. It shall be unlawful for any person entitled to draw books under the provisions of this article, to permit any person to draw books in his name, unless the books so drawn are expressly for his own use: every person so offending shall be liable to pay a fine of five dollars for every such offence.

Certain public documents, &c to be collected and preserved.

SECT. 91. It shall be the duty of the librarian, under the direction of the auditor, treasurer, and secretary of state, to collect annually, and preserve, duplicate copies of the messages of the president of the United States, and of each of the governors of the several states, reports of the different heads of departments of the general and state governments, of the committees of ways and means of the several states, the reports of the committees of congress on all general subjects, and not to exceed two copies of the leading speeches made in congress on each side of the question, on every subject of general interest: also, copies of the reports and proceedings of public societies for the promotion of agriculture, the mechanic arts, history, and literature, all of which shall be bound and placed in the state library.

Repairs of room to be made.

SECT. 92. It shall be the duty of the librarian, under the direction of the auditor, treasurer, and secretary of state, to make such alterations and repairs in the library room as may be necessary for the proper keeping of the books.

Librarian to perform duties of agent of the town of Indianapolis, and make annual report thereof.

SECT. 93. In addition to the duties already enjoined upon the librarian by the provisions of this article, he shall do and perform all the duties that are now required by any existing law of this state, to be done and performed by the agent of state for the town of Indianapolis; and the librarian shall report annually his doings under the provisions of this section, at the time when he makes his other report provided for in this article.

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ARTICLE 7.

Room appropriated for the law library.

SECT. 94. The room adjoining the supreme court room, on the north, shall be set apart for the law library, and may be used and occupied by the members of that institution as a library room for said law library. The auditor, treasurer, and secretary of state shall cause plain shelving to be kept up in said room, sufficient to hold the books of said library, and the expense thereof shall be paid out of the treasury of state, upon the warrant of the auditor.

Certain laws and documents to be selected and put up in room south of library; residue how disposed of.

SECT. 95. It shall be the duty of the state librarian to select from the journals and laws now on hand, twenty copies of the journals of the house for each year, ten copies of the journals of the senate, thirty copies of the general laws, and fifteen copies of the local laws for each year, including those of the territorial legislatures; and he shall put up the same in the room immediately south of and adjoining the present library room, placing each year together, and marking the same; the copies remaining, after the selection here directed, shall be kept in said room, in yearly packages, and in good order, each year to be designated in some cheap and proper manner; and yearly hereafter he shall select and put up a like number as aforesaid, laying away the surplus as before directed.

Librarian to file and keep legislative papers, where and how—penalty for taking away or embezzling the same.

SECT. 96. The librarian shall have charge of the legislative papers, and the cases containing the same; and he shall remove the same to the room mentioned in the foregoing section; and such librarian shall put up in good order and keep in yearly files, all bills introduced into either branch of the general assembly; all petitions, memorials, and remonstrances, each in its appropriate file; and the files of each house shall be kept separately; and any person carrying away any of such papers or documents, without the leave of the house to which they belong, or embezzling the same, shall be liable to pay a fine of twenty dollars, to be recovered as other fines.

Senate and house clerks to hand over to librarian all papers as disposed of.

SECT. 97. It shall be the duty of the principal secretary of the senate and the principal clerk of the house to hand over to the librarian, immediately after the final action of both houses, each and every bill and joint resolution lost upon its final passage, and all petitions, memorials, remonstrances, and communications from the governor which are not journalized; and at the close of each session they shall also hand over to the librarian all bills laid upon the table and unacted on, together with those that were indefinitely postponed.

Librarian to report his transactions under this article.

SECT. 98. The librarian shall, in his annual report to the next legislature, state at full length his transactions under the provisions of this article.

Penalty on librarian for improperly loaning or hiring books—how recovered.

SECT. 99. It shall be unlawful for the librarian to loan or hire any book belonging to the state library to any person other than those that are entitled to draw books under the provisions of this article. For each and every violation of the provisions of this section, the librarian shall be liable to pay a fine of not less than ten dollars nor more than one hundred dollars, to be recovered by action of debt in the name of the

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Who to prosecute.

state of Indiana, for the use of the state library, before any court having competent jurisdiction of the case; and it is hereby made the duty of the auditor, treasurer, and secretary of state to see that the provisions of this section be carried into effect.

ARTICLE VIII.

Of the state agent.

SECTION
100. How elected—term of office.
101. Vacancies, how filled.
102. His oath and bond.
103. Shall take charge of the suspended debt—prosecute for and adjust the same.
104. Shall prosecute officers concerned in the improvement system, or in selling state bonds.
105. Shall conduct all suits now pending therefor.
106. May settle and adjust the same.
107. Shall make annual report of his transactions, &c. to the general assembly.
108. May employ counsel.
109. May apply for change of venue—for what cause, and how.

How elected—term of office.

SECT. 100. The state agent shall be elected biennially by joint ballot of both houses of the general assembly, counting from the month of December, one thousand eight hundred and forty-one, and shall hold his office for the term of two years from the time of his election, subject to removal for sufficient cause by joint resolution of the general assembly.

Vacancies, how filled.

SECT. 101. If a vacancy shall occur in said office while the general assembly is convened, the same shall be supplied by joint ballot of both houses; but if not so convened, such vacancy shall be filled by the governor by a special appointment, to continue until the general assembly shall elect an agent.

His oath and bond.

SECT. 102. Such agent, before entering on the duties of his office, shall take the oaths required of public officers by the constitution and laws of this state, and shall also give bond payable to the state of Indiana, in the penal sum of fifty thousand dollars, with sufficient sureties, to be approved by the governor and treasurer of state, with condition for the honest and faithful discharge of all the duties required of him by law as such agent.

Shall take charge of suspended debt, prosecute for and adjust the same.

SECT. 103. It shall be the duty of the said agent of state to take charge of the suspended debt of the state, and commence, prosecute, and defend all suits in the name of the state, relating thereto, or necessary for the recovery of, or securing the same; and he may make such sale, settlement, or adjustment of the securities held by the state, for money or valid state bonds, as the interests of the state may require.

To prosecute officers concerned in improvement system or selling state bonds.

SECT. 104. Such agent shall commence and prosecute, in the name of the state, such suits as it may appear to him can be sustained against the officers and their sureties, and all other persons, corporations, and companies, or their officers or agents,

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who have been in any way or manner connected with the state system of internal improvement, or who shall appear to have bought, sold, or transferred the bonds or securities of the state on account of such system, or of the state bank of Indiana, whereby the state has been defrauded or suffered loss.

Shall conduct suits now pending therefor.

SECT. 105. Such agent shall also direct and control the further prosecution of suits now pending, touching any of the matters specified in this article in such manner as he shall adjudge best for the interests of the state.

May settle and adjust all such cases.

SECT. 106. If any person, company, or corporation, in any matter, the settling, adjustment, or management of which belongs to such agent, shall settle and adjust the same to his satisfaction, and make sure to the state all claims, demands, debts, and liabilities in favor of the state; such agent may forbear bringing suits, or further prosecuting any suits which may have been brought.

Make report of his transactions, &c. to the legislature.

SECT. 107. Such agent shall report annually to the general assembly, during the first week of its session, his proceedings in relation to the several duties required of him by law, together with a statement of the funds and claims by him sought to be collected or enforced, the prospect of the final recovery thereof, and all other matters connected with the public debt and securities of the state which may come to his knowledge.

May employ counsel — their compensation.

SECT. 108. Such agent may employ counsel, so far as the same may be necessary in the discharge of his several duties, who shall receive a reasonable compensation for their services.

Authorized to apply for a change of venue, for what cause, and how.

SECT. 109. Said agent shall have the right to obtain a change of venue, on making suggestion in any suit pending in any county in this state, verified by oath, that he verily believes that the state cannot have a fair trial in the county in which such suit is pending, or before the court or presiding judge before whom the same is to be tried; and on any such suggestion being made, a change of venue shall be granted in like manner as in other cases of change of venue authorized by the laws of this state.

CHAPTER 7.

OF THE BOARD OF COUNTY COMMISSIONERS OF THE SEVERAL COUNTIES IN THIS STATE, AND OF THE COUNTY AUDITOR, ASSESSOR, AND TREASURER.

ARTICLE 1. Of the board of county commissioners and their duties.
ARTICLE 2. Of the county auditor.
ARTICLE 3. Of the county assessor.
ARTICLE 4. Of the county treasurer.

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ARTICLE I.

Of the board of county commissioners and their duties.

SECTION
1. A board of commissioners to be elected for each county.
2 Their oath of office and how certified.
3. To be a body corporate, and their powers as such.
4. When to meet for the transaction of business.
5. Auditor to act as clerk.—Sheriff to attend meetings and execute orders.
6. Board, when equally divided on any question, same shall be continued to the next term.
7. Vacancies in office of commissioner, how filled.
8. Board may adopt rules.—When trying causes shall pursue the rules of the circuit court.
9. Shall have a seal.—Copies of proceedings, when signed and sealed, to be evidence.
10. Board may administer oaths.
11. Shall have power to preserve order, punish contempts, and enforce orders and decrees.
12. Justices to continue to transact business in certain counties until commissioners are elected.
13. Suits, &c., to progress under new board same as before, and all rights, and obligations to continue in force.
14. The powers and duties of the board of commissioners: 1. To dispose of the property of the county. 2. To adjust accounts against the county—to raise revenue. 3. To examine accounts of disbursing officers. 4. To perform all other duties enjoined by law.
15. Shall cause a record to be made, 1. Of all their proceedings. 2. Of all resolutions and decisions, the settlement of all claims, &c.
16. All accounts, vouchers, resolutions, &c., to be filed and preserved by county auditor.
17. The books and records of the board to be kept by county auditor, and to be open to inspection.
18. Sittings of the board to be public.
19. Sittings, where to be held.

SECTION
20. Board shall cause a pound to be erected—appoint a keeper—his duty—penalty for his neglect.
21. Board shall cause public buildings to be erected and kept in repair.
22. Buildings, when to be made fireproof—penalty for keeping office in any other building.
23. A detailed statement of all claims against the county to be filed.—Claimant may be examined on oath and other proof taken.
24. Board may make allowance for detection and conviction of horse-thieves.
25. Sheriff to attend sittings of the board and execute all commands and process.
26. When fund arising from sales of lots is exhausted, claims on the same to be paid out of county treasury.
27. Board to make allowance to clerk, sheriff, and auditor for extra services.
28. Claims for money advanced and money due to commissioners for locating seat of justice, to be first paid.
29. Public property of the county liable for judgments against commissioners; but court may give time for payment out of revenue to be assessed.
30 County officers not to purchase, &c., claims against the county below par.
31. Penalty therefor.
32. Board may appoint commissioners to expend three per cent. fund—the work to be let to the lowest bidder.
33. Board may release indigent, &c., persons from payment of road tax.
34. Board to select two students for state university.
35. Board shall publish an annual statement of receipts and expenditures.
36. Penalty for failing to discharge their duties.
37 Appeal allowed.—When it may be taken by a person not a party to the record.

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SECTION
38. Appeal must be taken within thirty days.—Bond to be given—its condition and by whom approved.
39. Transcript and papers to be filed by auditor in the clerk's office within twenty days.
40. Summons, when to issue against appellee—how served.
SECTION
41. Appeal, when to stand for hearing.
42. Appeal to be docketed and tried as other cases.
43. Circuit court may give final judgment or return the cause to the board of commissioners.

ARTICLE 1.

A board of commissioners to be eleted for each county.

SECTION 1. There shall be, and hereby is organized in each county in this state, a board of commissioners for transacting county business, to consist of three qualified electors, any two of whom shall be competent to do business, to be elected by the qualified electors of the several counties respectively, at the general elections on the first Monday in August.

Oath of office to be taken and certified.

SECT. 2. Each person elected as a commissioner of a county shall, on receiving a certificate of his election, take the oath or affirmation required by the constitution and laws of this state, before some person legally authorized to administer the same; which oath or affirmation, being certified on the back of such certificate under the hand and seal of the person administering the same, shall be sufficient authority for such commissioner to take his seat with, and act as a member of the board during the term for which he was elected.

To be a body corporate and their powers as such.

SECT. 3. The commissioners thus elected and qualified, shall be considered a body corporate and politic by the name and style of "The board of commissioners of the county of ——," and as such, and in such name and style, may sue and be sued, plead and be impleaded, defend and be defended, answer and be answered unto, in any court, either of law or equity, and do and transact all business on behalf of their respective counties that may be assigned to them, from time time, by law; and in all cases where their respective counties may have been injured in their goods, chattels, lands, tenements, rights, credits, effects, or contracts, such commissioners may, in their corporate name and style, without setting forth their individual names, bring any suit or suits, action or actions, either in law or equity, which may be best calculated to obtain redress for any such injury, in the same manner that private individuals might or could do; and may, in like manner, in their corporate name and style, be sued by any person or persons having any manner of claim against such county.

When to meet for transaction of business.

SECT. 4. The board of commissioners shall meet at the court house in each and every county, for the purpose aforesaid, or at the usual place of holding the circuit court in such county, on the first Mondays in January, March, May, September, and November in each and every year, and may sit five days at each term if the business of the county shall require it; but if the circuit court shall meet on any of the beforementioned days, the commissioners shall meet on the Monday preceding.

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PART 1.

Auditor to act as clerk.

Sheriff to attend meetings, &c.—execute orders.

SECT. 5. The auditor of the county shall, by virtue of his office, attend the meetings of the board of commissioners and keep a record of their proceedings, and do such other business as he shall be required by law to do; and the sheriff of the county shall also, by himself or deputy, attend said board and execute their orders.

Board equally divided on any question, same shall be continued to next term.

SECT. 6. When two only of the members shall attend the meeting of the board, and a division shall take place on any question, it shall be continued until the next meeting before it shall be finally determined.

Vacancies, how filled.

SECT. 7. When any vacancy shall happen in the office of commissioner, the circuit court of the county, or the two associate judges in vacation, shall appoint a suitable person or persons to fill such vacancy until the next annual election of commissioners, when such vacancy shall be filled by an election by the electors of the county.

May adopt rules—on trials of causes shall pursue the rules of circuit courts.

SECT. 8. Such board shall have power, and it is hereby made their duty, to adopt such rules and regulations for their government and for the transaction of business as may be necessary and proper, not inconsistent with the laws and constitution of this state; and in the trial of causes litigated before them they shall comply, so far as practicable, with the rules of conducting business in the circuit courts of this state.

Shall have a seal.—Copies of proceedings when signed and sealed to be evidence.

SECT. 9. The commissioners of each county respectively shall have and use a common seal for the purpose of sealing their proceedings; and copies of the same, when signed and sealed by the said auditor, shall be sufficient evidence of such proceedings on the trial of any cause in any of the courts of this state.

May administer oaths.

SECT. 10. The said board, when sitting in their official capacity for the transaction of business, are hereby authorized to administer all necessary oaths or affirmations, or cause the same to be done by the auditor to any person or persons appearing before them as witnesses or otherwise.

Power to preserve order, punish contempts, and enforce orders and decrees.

SECT. 11. They shall have full power and authority to preserve order and decorum in their courts, when sitting as such, to punish contempts by fine not exceeding three dollars, or imprisonment not exceeding twenty-four hours, may enforce obedience to all orders made by them by attachment or other compulsory process; and when fines are assessed by them, execution shall issue therefor, which may be either a capias pro fine or fieri facias, as such board shall at the time direct; and the amount shall be collected by the proper sheriff, and when so collected, shall be paid over and appropriated as other fines.

Justices doing county business to continue to transact the same until election of commissioners.

SECT. 12. If the provisions of this article shall go into effect in any county where the county business is done by the justices of the peace constituting a board doing county business, such board shall continue to act in all respects and with like powers as heretofore, until the board of county commissioners shall be chosen and qualified; after which such last mentioned board shall do and transact all the county business coming within the purview of their authority and duties.

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Suits and proceedings to progress under new board, and all rights and obligations to continue in force.

SECT. 13. All writs, actions, and proceedings pending before said board of justices, or pending before any court in which they are parties, or which has been appealed from their decision, shall proceed to final action or determination under the authority or direction, so far as the same is necessary, of such board of county commissioners, in like manner as it might have been continued, done, transacted, or determined by such board of justices, or in their name, as the case may require; and all contracts or obligations made by or with such board of justices, and things done and liabilities suffered by, for, or against them in their corporate capacity, shall be of the like force and effect as for or against such board of county commissioners in their corporate capacity, and for and against such county as if such contracts or obligations had been made, executed, or entered into with and by such board of county commissioners.

Powers and duties of board of commissioners.

SECT. 14. The board of county commissioners in their respective counties shall have power at their meetings:

To dispose of the property of the county.

1. To make such orders respecting the property of the county as they may deem expedient, in conformity with any law of this state, and to take care of and preserve such property.

To adjust accounts against county—to raise revenue.

2. To examine, settle, and allow all accounts chargeable against such county, not otherwise provided for, and to direct the raising of such sums as may be necessary to defray all county expenses and charges.

To examine accounts of disbursing officers

3. To examine into and audit the accounts of all officers having the care, management, collection, or disbursement of any money belonging to the county, or appropriated by law or otherwise, for its use or benefit; and,

To perform all other necessary duties.

4. To perform all other duties which may be enjoined on them by any law of this state.

Record shall be made,

SECT. 15. Such board shall cause to be recorded in a book to be kept for that purpose,

Of all proceedings.

1. All the proceedings of the board, touching such matters as may come before them.

Of all resolutions and decisions—settlement of claims, &c.

2. To make regular entries of all their resolutions, and decisions on all questions concerning the payment or raising of moneys, the management and disposition of the property of the county, the settlement and allowance of claims against the county, the auditing of accounts of any county or other officer, the adjustment or settling of which belongs to such board, and all other matters properly cognizable before them.

Accounts, vouchers, resolutions, &c. to be filed and preserved by county auditor.

SECT. 16. All accounts, vouchers, papers, and documents, touching the business or property of the county, and all resolutions and orders of such board shall be carefully kept and preserved by the county auditor, and filed in his office.

Books, &c. to be kept by auditor, and to be open to inspection.

SECT. 17. The books of said board, and all records of their proceedings, shall be kept by said auditor, and shall be open to the inspection and examination of all persons, without fee or reward.

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Sittings of the board to be public. Where to be held.

SECT. 18. The board of county commissioners shall sit with open doors, and all persons may attend their meetings.

SECT. 19. Whenever there shall be no court house, or the same shall be unfit or inconvenient, the board shall hold its meetings in the office of the county auditor, or in such other building at the county seat as such board shall direct.

Board shall cause a pound to be erected—appoint a keeper—his duty—penalty for neglect.

SECT. 20. The board of county commissioners in each and every county shall cause a pound to be erected, at or near the court house, with a good and sufficient fence, gate, lock and key, where estray horses, mules, and asses may be kept, on the first day of each term of the circuit court; and the said board shall also appoint some fit person, who shall take charge of said pound and keep the same in repair, whose duty it shall also be to attend at the said pound on the several court days during the time when estrays are directed to be kept there, with the key of the same; and the said board shall make such reasonable allowance for the erection and keeping of said pound as to them shall seem proper, to be paid out of the county treasury; and any person being appointed and undertaking the charge of said pound, and failing to discharge his duties agreeably to the directions herein expressed, shall forfeit and pay to any person who may thereby be injured, the sum of eight dollars for every such offence, with costs, recoverable before any justice of the peace of the county where such offence shall have been committed.

Cause public buildings to be erected, and kept in repair.

SECT. 21. The board of county commissioners shall proceed to cause a court house, jail, and public offices for the clerk, recorder, and auditor to be erected and furnished, where the same has not been done, and shall keep all the public buildings of the county in repair.

When to be made fire proof—penalty for keeping office in any other building.

SECT. 22. Said offices, if the same is practicable, shall be made fire proof; and if any officer, after the completion of the same, shall, without the consent of the board of county commissioners, keep his office and the books and papers belonging thereto, in any other building than such fire proof office, he shall, upon conviction on indictment, be fined in any sum not exceeding five hundred dollars.

Detailed statement of all claims to be filed—claimant may be examined and other proof be taken.

SECT. 23. No allowance shall be made to any person or persons, unless the person or persons in whose favor such allowance is to be made, shall file with such board of county commissioners a detailed statement of the items of charge or claim for which such allowance is to be made, nor unless it shall appear to their satisfaction that such detailed statement is correct, and the charges right; and for the purpose of ascertaining the same, the board shall have full power to take proof and examine under oath the claimant or claimants, or other competent witnesses.

May make allowances for detection and conviction of horse thieves.

SECT. 24. Whenever hereafter any horse thief may be apprehended and convicted of stealing any horse, mare, or mule, it shall be lawful for the board of county commissioners of the county where such theft may have been committed, to

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allow the person or persons apprehending such felon or felons any sum out of the county treasury not exceeding forty dollars.

Sheriff to attend sessions of the board, and execute all commands and process.

SECT. 25. The sheriff of the county shall be the sheriff and executive officer of such board of county commissioners, shall attend during the sessions, and execute all their lawful commands and process.

When fund arising from sale of lots is exhausted, claims on the same to be paid out of county treasury.

SECT. 26. Whenever any person shall exhibit any claim against any county for services rendered, for which the fund arising from the sale of lots at the county seat or otherwise, is especially appropriated, and those funds are insufficient, or have been wholly expended, it shall be the duty of the board of county commissioners to give such claimant an order on the county treasury for his claim, or so much thereof as such fund shall be insufficient to pay, to be paid out of any moneys not otherwise appropriated.

To make allowances to clerk, sheriff, and auditor for extra services.

SECT. 27. The board of county commissioners shall annually allow the clerk of the circuit court, auditor, and sheriff of their county, such compensation for their extra services as to such board shall seem reasonable; which extra allowance shall be deemed a sufficient compensation to such officers for all extra or other services whatsoever, in the discharge of any of the duties of their respective offices, for which no certain fee or compensation is fixed or allowed by law.

Claims for money advanced, and money due to commissioners for locating seat of justice, to be first paid.

SECT. 28. When any claim exists for money advanced by the county auditor, sheriff of the county, or clerk of the circuit court, or any other county officer, for the use or benefit of the county, pursuant to the provisions of law, or of any order of said board, or when there shall be any claim due to any commissioner for locating the seat of justice of the county, any such claim shall have preference, and shall be allowed by the board, and paid by the treasurer out of any moneys in his hands at the time, or any moneys which may first come into his hands after the presentment of the order therefor.

Public property of the county liable for judgments against commissioners, but court may give time for payment out of revenue to be assessed.

SECT. 29. When any judgment has been obtained against any board of county commissioners in their corporate capacity, the public property of the county shall be liable therefor; but the court rendering such judgment may, on the petition of the board, prescribe the time or times at which execution may issue thereon, so as to allow such board a proper and reasonable time, if the same is necessary, to assess and collect a sufficient amount of revenue to pay and discharge such judgment, in addition to the ordinary and requisite expenses of the county.

County officers not to purchase &c. claims against the county below par.

SECT. 30. No member of the board of county commissioners, county treasurer, county auditor, sheriff, or clerk of the circuit court, shall either directly or indirectly purchase or receive in payment, exchange, or in any way whatsoever, any demand against his county, nor any county order for any claim allowed by the board of county commissioners, for a less amount than that expressed on the face of such demand or order.

Penalty therefor.

SECT. 31. Every officer named in the preceding section who shall violate any of the provisions thereof, shall, upon conviction

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in any court of competent jurisdiction, be fined in any sum not exceeding five hundred dollars.

May appoint commissioners to expend three per cent. funds —the work to be let to the lowest bidder.

SECT. 32. Said board of county commissioners, if they shall deem it expedient, may appoint one or more commissioners to expend the three per cent. fund in their counties respectively; and in all cases where commissioners are so appointed, and money is appropriated and placed in their hands to be expended on any public work, it shall be the duty of such commissioner or commissioners to let such work to the lowest bidder therefor, upon giving due notice of such letting, unless otherwise expressly directed by such board of county commissioners.

May release indigent, &c. persons from poll and road tax.

SECT. 33. Such boards are hereby vested with discretionary power to exempt any person of their county from the payment of a poll tax, a road tax, or from personal labor on public roads and highways, when they shall find him or her unable to pay such tax or perform such labor, owing to bodily infirmity.

Board to select two students for state university.

SECT. 34. The board of county commissioners of each county, at any regular session, may determine who of those who may apply shall be entitled to the right to become students in the Indiana University, free of all charges of instruction and tuition, and such board in like manner may select a student to fill any vacancy which may occur of any student from such county in said college; and such board shall give to every student selected according to the provisions of this article, a certificate, sealed with their seal and attested by the county auditor, which certificate shall be sufficient evidence to the officers of such institution of such student's right to enter said university; but no county shall be entitled to more than two such students at the same time.

Annual statement of receipts and expenditures to be published.

SECT. 35. The board of county commissioners at their session in May, or when the term of the circuit court prevents their meeting in May, then at their first meeting thereafter, in every year, shall make a fair and accurate statement of the receipts and expenditures of the preceding year, and shall cause the same to be posted up at the court house door, and at two other places in their county, and published in some newspaper of such county, if there be any.

Penalty for failing to discharge their duties.

SECT. 36. If any board of county commissioners, or any of the members of such board, shall fail or refuse to discharge any of the duties enjoined upon them by law as such commissioner or commissioners, or as such board of county commissioners, every member of said board so failing or refusing, shall individually and severally be liable to pay a fine of not less than fifty nor more than five hundred dollars, upon conviction thereof on presentment or indictment in any court of competent jurisdiction.

Appeal allowed in all cases—when may be taken by a person not a party to the record.

SECT. 37. From all decisions of the board of county commissioners there shall be allowed an appeal to the circuit court, by any person or persons aggrieved by such decision; but if such person thus appealing shall not be a party to the matter or proceeding in which such decision was made, such appeal shall

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not be allowed, unless he shall make and file in the office of the county auditor his affidavit, setting forth that he has either directly or indirectly, an interest in the matter decided, and that he is aggrieved by such decision, alleging explicitly in such affidavit the nature of his interest.

Appeal to be taken within thirty days—bond to be given—its condition, and by whom approved.

SECT. 38. Such appeal shall be taken within thirty days after the time such decision was made, by the appellant filing with the county auditor a bond, with sufficient penalty and sureties, to be approved by said auditor, with condition for the due prosecution of such appeal, and the payment of all costs which have accrued or may accrue, if the same shall be adjudged against said appellant.

Transcript and papers to be filed by auditor in the clerk's office within twenty days.

SECT. 39. Within twenty days after the filing of such appeal bond, the auditor shall make out a complete transcript of the minutes, orders, entries, and proceedings of said board, relating to the matter or proceeding appealed from, and shall deliver the same, and all the papers and documents filed in such matter or proceeding, with the auditor, and also the said appeal bond, to the clerk of the circuit court of the county in which the decision appealed from was made.

Summons, when to issue against appellee—how served.

SECT. 40. When such appeal is taken by a person not a party to the matter or proceeding appealed from, or when such appeal is taken in vacation, the appellant, if there be an appellee, or party to such matter or proceeding, shall cause a summons to be sued out of the clerk's office of the proper circuit court, returnable on the first day of any term of such court next after the date thereof, requiring the appellee to appear and answer said appeal in said court, which summons shall be issued and served as other similar process issued out of such court.

Appeal, when to stand for hearing.

SECT. 41. If such appeal shall be filed, and such summons, when a summons is necessary, served ten days before the first day of the court next after such appeal is filed, such cause shall stand for trial at such term; otherwise it shall be continued until the next term of the court, unless the parties shall consent to the same being heard at such first term.

Appeal to be docketed and tried as other causes.

SECT. 42. All appeals thus taken to the circuit court shall be docketed among the other causes pending therein, and the same shall be heard, tried, and determined in like manner as original causes: said court in all respects proceeding therein and determining the same, as far as necessary and proper, as it should have been conducted, heard, and determined before said board of county commissioners.

Circuit court may give final judgment, or return the cause to the board,

SECT. 43. Such court may make a final determination of the matter or proceeding thus appealed, and cause the same to be executed, or may send the same down to such board, with an order or direction how to proceed, and may require such board to execute, perform, or comply with the order or final determination made by said court in the premises.

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ARTICLE II.

Of the county auditor.

SECTION
44. Term of office.
45. Auditor shall give bond—its penalty and condition.
46. His oath of office—same to be endorsed on commission.
47. Suit on bond to be in the name of state for benefit of party injured
48. Failure to give bond and take oath shall vacate office.
49. Vacancies, how filled—like bond and oath required.
50. When board of commissioners may appoint deputy auditor.
51. Auditor's office to be kept at seat of justice; at what hours to be kept open.
SECTION
52. Auditor may administer oaths.
53. Auditor shall be clerk of board of county commissioners—duties as such.
54. Auditor shall deliver over books, &c. to his successor.
55. Auditor to keep account against treasurer, and charge him with the amount of all receipts filed.
56. Accounts, &c. how audited; orders drawn therefor on treasury; orders to be numbered and registered.
57. When claim may be divided and several orders given therefor.

Term of office.

SECT. 44. The county auditor shall hold his office for the term of five years from the first Monday in March next succeeding his election, and until his successor is chosen and qualified.

To give bond—its penalty, and condition thereof.

SECT. 45. Previous to entering on the duties of his office, such auditor shall give bond with two or more sufficient sureties, to the acceptance of the board of county commissioners, payable to the state of Indiana, in the penalty of two thousand dollars, with condition for the faithful discharge of the duties of his office.

His oath of office—to be endorsed on commission.

SECT. 46. He shall also take an oath of office, which shall be endorsed on his commission, that he will, to the best of his skill and ability, faithfully discharge the duties of his said office.

Suit on bond in the name of the state for benefit of party injured.

SECT. 47. Suit may be instituted on such bond against the county auditor and his securities, in the name of the state of Indiana, and for the use of the state, county, or any party or person injured by the misconduct in office of the auditor, or by the omission of any duty required of him by law.

Failing to give bond and take oath, shall vacate office.

SECT. 48. If any person elected to the office of county auditor shall not give bond and take the oath or affirmation as required in the forty-fifth and forty-sixth sections of this chapter, on or before the first Monday of March next after his election, the office shall be considered vacant.

Vacancies, how filled; like bond and oath required.

SECT. 49. When a vacancy shall happen in the office of county auditor, either from death, removal out of the county, resignation, failure to give bond, or from any other cause, the board of county commissioners of the proper county shall appoint some suitable person to fill such vacancy; and the person so appointed shall give bond and take and subscribe an oath or affirmation, as required in the forty-fifth and forty-sixth sections of this chapter, and shall hold his office until the next annual

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election to be held in such county, and until his successor shall be elected and qualified. ARTICLE 2.

When board of commissioners may appoint deputy auditor.

SECT. 50. When any county auditor, having no deputy, shall be unable, by reason of sickness or otherwise, to perform the duties of his office within the time specified by law for their performance, or when both the auditor and his deputy shall be so disabled by sickness or otherwise, the board of county commissioners of the proper county shall appoint some suitable person to do and perform the duties of county auditor during such disability, and may require of the person so appointed such bond and security for the faithful discharge of the duties of the appointment as they shall deem expedient.

Office to be kept at seat of justice—at what hours open.

SECT. 51. The county auditor shall keep his office at the seat of justice of his county, and shall keep the same open for the transaction of business at all reasonable hours of each day, Sundays and the fourth of July excepted.

May administer oaths.

SECT. 52. The county auditor and his deputy are hereby authorized to administer any oath or affirmation rendered necessary to the performance of any of the duties of their respective offices.

Shall be clerk of board of commissioners —duties as such.

SECT. 53. The county auditor shall, by virtue of his office, be clerk of the board of county commissioners of his county, and shall keep an accurate record of all their corporate proceedings, and shall carefully preserve all the documents, books, records, maps, and other papers required to be deposited or kept in his office.

To deliver over books, &c. to successor.

SECT. 54. Every county auditor, on going out of office, shall deliver up to his successor in office, all the books, records, maps, documents, papers, vouchers, and other property in his hands belonging to the county; and in case of the death of any county auditor, his personal representative shall, in like manner, deliver up all such books, records, maps, documents, and other property.

Auditor to keep account against treasurer, and charge him with amount of all receipts filed.

SECT. 55. The county auditor shall keep an accurate account current with the treasurer of his county; and when any person shall deposite with the auditor any receipt given by the treasurer for any money paid into the treasury, the auditor shall file such receipt in his office, and shall charge the treasurer with the amount thereof.

Accounts, demands, &c., how audited—orders drawn therefor on treasury; same to be numbered and registered.

SECT. 56. All accounts, debts, and demands justly chargeable against any county, and which are not directed by law to be settled and allowed by some other person or tribunal, shall be examined and settled by the auditor of such county; and for all such just accounts, debts, and demands, settled and allowed by the auditor, or settled and allowed by any other person or tribunal authorized by law so to do, and for all demands against such county, the amount of which is fixed by law, the county auditor shall issue orders on the treasury of such county, payable to the several persons entitled thereto; and all such orders shall be numbered progressively, and the number, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn, shall, at the time of issuing

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the same, be entered in a book to be kept by the auditor for that purpose.

When claims may be divided, and several orders given therefor.

SECT. 57. When any person is entitled to a county order of a larger amount than his county tax, and is desirous to appropriate a part of the same to the payment thereof, such county auditor shall give such person, in lieu of an entire order, two or more county orders, making in all the amount to which he is entitled, and shall enter and number such orders as in other cases.

ARTICLE III.

Of the county assessor.

SECTION

58. Term of office—assessor to perform all the duties required by law.
59. Assessor's bond, and how approved—oath of office to be endorsed on bond and where filed.
60. Failure to give bond and take oath, to vacate office.
61. Vacancies, when to be filled by county commissioners.
62. Like bond and oath required—appointment to continue until the next annual election.
63. Deputy, when and how appointed.
64. Oath required of deputy—what duties he may discharge—the principal liable for his misconduct.
65. Penalty on assessor and deputy for neglect of duty—courts to charge grand jury thereon.
66. Account of assessor, how kept and proved.
67. His compensation not to exceed two dollars per day, to be allowed by county commissioners.
68. Who may sue on assessor's bond, and when.
69. Assessor may administer oaths.

Term of office—to perform all duties required by law.

SECT. 58. The county assessor shall hold his office for the term of two years from the time of his election, and until his successor is chosen and qualified; and shall do and perform all the duties which are now, or may hereafter be required of him by law.

His bond—how approved—oath of office to be endorsed on bond and where filed.

SECT. 59. The county assessor, previous to entering on the duties of his office, shall give bond, with two or more freehold securities, to the acceptance of the board of county commissioners, in the penal sum of two thousand dollars, payable to the state of Indiana, and conditioned for the faithful and impartial discharge of the duties of his office, according to law; and shall take and subscribe an oath or affirmation, to be endorsed on his bond, that he will faithfully and impartially discharge the duties of his said office to the best of his skill and ability; and the bond so endorsed, shall be deposited with the county treasurer, and by him carefully preserved.

Failure to give bond and take oath, to vacate office.

SECT. 60. If any county assessor shall not give bond and security, or shall not take the oath or affirmation as required in the preceding section, on or before the first Monday of December next after his election, his office shall be considered vacant.

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ARTICLE 3.

Vacancies, when to be filled by county commissioners.

SECT. 61. In all cases where the office of county assessor shall become vacant, by death, removal from the county, resignation, failure to give bond, or from any other cause, and the interests of the county and state require that such vacancy should be filled previous to the next annual election, the board of county commissioners of the proper county, shall appoint some suitable person, having the qualifications of an elector and residing within such county, to fill the vacancy; and, if necessary, the board may hold a special session for that purpose.

Like bond and oath required—appointment to continue until next annual election.

SECT. 62. The person appointed to fill such vacancy shall give bond and take an oath or affirmation as provided in the forty-fifth and forty-sixth sections of this chapter, and shall hold his office until the next annual election, and until his successor is elected and qualified.

Deputy, when and how appointed.

SECT. 63. Whenever the board of county commissioners of any county shall be of opinion that the county assessor will be unable to perform all the duties required of him, within the time specified by law for the performance thereof, the assessor may, with the approbation of the board of county commissioners, appoint one or more deputies to assist in the performance of the duties of his office.

Oath required of deputy—what duties he may discharge.—Principal liable for his misconduct.

SECT. 64. Each deputy assessor shall be sworn or affirmed faithfully and impartially to discharge the duties of his appointment, and may do and perform any duty required of his principal except making a valuation of lands and townlots, and serving as a member of the board of equalization; and the principal shall be liable for all the misconduct in office of his deputy or deputies.

Penalty on assessor and deputy for neglect of duty.

SECT. 65. If any assessor shall, by himself or deputy or deputies, be guilty of any neglect of duty, which, by any law now in force, or which may hereafter be enacted, it is made his duty to perform, the board of county commissioners may make such deduction from his account for services rendered, as they may deem just and reasonable; and he, or the deputy guilty thereof, shall, moreover, be subject to presentment or indictment by the grand jury of the county, and may be fined in any sum in the discretion of the jury trying the same, not exceeding five hundred dollars; and it is made the duty of the judges of the circuit court to give this section in charge to the grand jury of the proper county.

Courts to charge grand jury thereon.

Account of assessor, how kept and proved.

SECT. 66. Each county assessor and deputy assessor shall, at the end of each week in which he shall have been engaged in the performance of any of the duties required of him by law, enter an account, in writing, of the number of days or parts of days he may have been so engaged during the week; and, at some stated meeting of the board of county commmissioners, shall present such original account to said board, and shall testify, under oath or affirmation, to the accuracy of such account, and shall answer such questions respecting the same as may be put to him by the board.

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Compensation, not to exceed $2 per day, to be allowed by county commissioners.

SECT. 67. The assessor and deputy assessor shall each be allowed such sum per day, not exceeding two dollars, as the board of county commissioners may see fit to allow, for each day that the board shall be satisfied they shall have been respectively employed in the discharge of the duties required of them by law.

Who may sue on assessor's bond, and when.

SECT. 68. Suit may be instituted on the bond given by the assessor, either for the state of Indiana, the board of county commissioners, or any person injured by the misconduct in office of the assessor or his deputy, or by the omission of any duty enjoined on him by law.

May administer oaths.

SECT. 69. The county assessor and his deputy are hereby authorized to administer all oaths and affirmations contemplated by law in the discharge of their duties as such assessors.

ARTICLE IV.

Of the county treasurer.

SECTION
70. Term of office.
71. His bond—its penalty and condition.
72. Oath of office to be endorsed on bond—Bond, where to be filed.
73. Failure to give bond and take oath to vacate office.
74. Vacancies, how filled—bond and oath required—term of appointment.
75. Office, where to be kept—accounts for money received and expended, how to be kept.—Taxes received, when to be entered.
76. Treasurer shall receive and pay out all moneys due the county.
77. Treasurer shall give receipt for money—same to be filed with auditor, and treasurer charged therewith.
78. Books, &c., open to inspection of commissioners—commissioners shall examine, &c., once a year.
79. Time of redeeming orders to be endorsed, &c.
80. Orders unpaid for want of funds, to be endorsed and bear interest.
81. Treasurer to advertise when ready to redeem orders—interest thereafter to cease.

SECTION
82. Interest paid on orders to be noted on the same and in the books.
83. Time of presenting orders to be noted and preference to be given in payment.
84. Orders shall be received for county taxes, but no money to be paid thereon if preferred orders are yet unpaid.
85. Treasurer, when to deposit with county auditor the orders redeemed.
86. Board of commissioners may require treasurer to attend certain days in each township to receive taxes—treasurer to give notice thereof.
87. On suit brought against delinquent treasurer, he may be removed and the vacancy filled.
88. Same proceedings against delinquent deputy as against treasurer.
89. Treasurer to sell delinquent lands, &c., and perform all other duties required by law.
90. Treasurer to make annual settlement—his per centage.
91. Treasurer, or his representatives, to deliver money, books, &c., to successor.

Term of office.

SECT. 70. The county treasurer shall hold his office for the term of three years from the time of his election, and until his successor is chosen and qualified.

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ARTICLE 4.

His bond—penalty and condition.

SECT. 71. Each county treasurer, before entering on the duties of his office, shall enter into bond with four or more sufficient freehold sureties, to the acceptance of the board of county commissioners, in a penalty not less than double the amount of money which may come into his hands, by virtue of his office, at any time during his term, with condition for the paying over of all moneys, according to law, which shall come into his hands for state, county, road, or other purposes; and that he shall well, faithfully, and promptly discharge all the duties of his said office according to law.

His oath of office—to be endorsed on bond—bond where to be filed.

SECT. 72. Such treasurer shall also take an oath for the faithful discharge of the duties of his office, which oath shall be endorsed on his said bond; and said bond, so endorsed, shall be deposited with the auditor of the county and by him carefully preserved.

Failure to give bond and take oath to vacate office.

SECT. 73. If any person elected to the office of county treasurer, shall not give bond and take the oath as required in the preceding section, on or before the twelfth day of August next after his election, his office shall be considered vacant.

Vacancies how filled—bond and oath of office of person appointed—term of appointment.

SECT. 74. Whenever the office of county treasurer shall become vacant, by death, removal out of the county, resignation, neglect to give bond, or from any other cause, the board of county commissioners of the proper county shall forthwith meet and appoint some suitable person to fill such vacancy; and the person so appointed shall give bond and take an oath as required in the seventy-first and seventy-second sections of this chapter, and shall hold his office until the expiration of the term for which his predecessor was elected or appointed, and until a treasurer is elected and qualified according to law.

Office, where to be kept—accounts for moneys received and expended, how to be kept.—Taxes received, when to be entered.

SECT. 75. Each county treasurer shall keep his office at the seat of justice for his county, and shall keep a fair and accurate account of all money by him received, showing the amount thereof, the time when, from whom, and on what account, received; also, of all disbursements by him made, showing the amount thereof, the time when, to whom, and on what account paid; and he shall so arrange his books that the amount received and paid on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate and distinct accounts, as well as that the whole receipts and expenditures shall be shown by one general or cash account; but no money received for taxes charged on the duplicate of the current year, shall be, by the treasurer, entered on his account with the county, until he shall have made his annual settlement therefor with the county auditor.

Shall receive and pay out all moneys due to the county.

SECT. 76. It shall be the duty of the county treasurer to receive all moneys due and accruing to the county, or which are by law required to be paid to him or into the county treasury, and to pay and disburse the same on orders issued and attested by the proper county auditor.

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PART 1.

Treasurer to give a receipt for money—same to be filed with the auditor, and treasurer charged therewith.

SECT. 77. When any money shall be paid to the county treasurer, (except such as shall have been paid on account of taxes charged on the duplicate,) the treasurer shall give to the person paying the same a receipt therefor; which receipt such person shall forthwith deposit with the county auditor, in order that the treasurer may be charged with the amount thereof, and the auditor shall, for the same, give him a quietus.

Books, &c. open to inspection of commissioners, who shall examine, &c. once a year.

SECT. 78. The books, accounts, and vouchers of the county treasury shall at all times be subject to the inspection and examination of the board of county commissioners, and it is made their duty to make such examination and count the money on hand at least once each year.

Time of redeeming orders—to be endorsed.

SECT. 79. The county treasurer, when an order drawn on him as treasurer, by the auditor of his county, is presented for payment, shall, if there be money in the treasury for that purpose, redeem the same, and shall write on the face of such order "redeemed," the date of redemption, and shall sign his name thereto.

Orders unpaid for want of funds to be endorsed, and bear interest.

SECT. 80. When any order shall be presented to the county treasurer for payment, and the same is not paid for want of funds, the treasurer shall endorse said order not paid for want of funds, annexing the date of its presentment, and shall sign his name thereto: and said order shall thenceforth bear an interest of six per centum per annum.

When ready to redeem orders, to advertise—interest thereafter to cease.

SECT. 81. So soon as there shall be sufficient funds in the treasury of the county to redeem the orders drawn thereon, and on which interest is accruing, the county treasurer shall give notice in some newspaper printed in his county or circulated therein, that he is ready to redeem such orders; and from the time of such notice, the interest on such orders shall cease.

Interest paid on orders to be noted on the same, and in books.

SECT. 82. When the county treasurer shall redeem any order on which any interest is due, he shall note on such order the amount of interest by him paid thereon, and shall enter on his account the amount of such interest, distinct from the principal.

Time of presenting orders to be noted, and preference given in payment.

SECT. 83. Orders drawn on the county treasury and properly attested, shall be entitled to a preference as to payment out of moneys in the treasury, properly applicable to such order, according to the priority of time in which the same may have been presented. The time of presenting such order shall be noted by the treasurer; and upon the receipt of any moneys into the treasury not otherwise appropriated, it shall be the duty of the treasurer to set apart the same, or so much thereof as may be necessary for the payment of such order.

Orders shall be received for county taxes, but no money to be paid thereon if preferred orders are unpaid.

SECT. 84. All orders drawn on the county treasury, and payable out of the county revenue, shall be received in payment of the county tax when tendered in payment thereof, without regard to the priority of the number thereof or the priority of time at which the same may have been presented for payment; but such treasurer shall pay no money on such order for any balance due thereon, if at the time of tendering the

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same there are county orders which have been presented and are outstanding and unpaid for want of money in the treasury.

Treasurer, when to deposit with county auditor the orders redeemed.

SECT. 85. The county treasurer shall, on the first Mondays of March, June, September, and December, in each year deposit with the auditor of his county, all orders in the treasury by him redeemed, and take the auditor's receipt therefor.

Board of commissioners may require treasurer to attend certain days in each township to receive taxes —treasurer shall give notice thereof.

SECT. 86. The board of county commissioners of any county, at their stated meeting in June in any year, if they shall deem it necessary for the convenience of the citizens of any township or townships in their county, to enable them to pay their taxes without attending at the county seat, may make an order requiring the county treasurer to attend one day or longer, in addition to the time prescribed by law, in such township or townships, for the purpose of receiving taxes, and shall notify the treasurer thereof, and the treasurer shall be bound to attend accordingly, and shall state in the notices to be given thereof on what days he will attend in said township or townships for that purpose.

On suit brought against delinquent treasurer he may be removed and the vacancy filled.

SECT. 87. Whenever suit shall have been commenced against any delinquent county treasurer, the board of county commissioners of such county may, at their discretion, remove such treasurer from office, and appoint some person to fill the vacancy thereby created, as hereinbefore directed.

Same proceedings may be had against delinquent deputy as against treasurer.

SECT. 88. If any deputy treasurer shall fail to pay over to his principal, on demand, any taxes or other money by him collected as deputy, the same proceedings may be had against him and his securities, at the instance of the treasurer, as are by this law authorized against treasurers for failing to make payment according to law.

Treasurers to sell delinquent lands, &c. and perform all other duties required by law.

SECT. 89. The county treasurers shall make sale of the delinquent lands and town lots in the manner which may be pointed out by law, and shall do and perform all such other duties as now are or hereafter may be required of them by any general or local laws.

Treasurer to make annual settlement in June—his per centage.

SECT. 90. Each county treasurer shall make a full settlement with the board of county commissioners of his proper county, at their stated meeting in June annually, and shall be allowed for his services two and one-half per centum on all moneys received, and a like per centum on all paid out during the preceding year, excepting the receipt of that collected on the tax duplicate, and excepting that which is paid out to the state as her revenue, and excepting that on which some other rate of compensation or fee for receiving or paying out, or both, is fixed by law; and shall be credited with the sum paid for printing such advertisements as he is required to publish in some newspaper, and with the sum paid by him for blank books and stationary in his office, to be paid on the order of the county auditor; but no per centage shall be allowed to the treasurer on any money by him received from his predecessor in office, or from the legal representatives of such predecessor.

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Treasurer and his representatives to deliver money, books, &c. to successor.

SECT. 91. Each county treasurer, on going out of office, shall deliver to his successor in office all the public money, books, accounts, papers, and documents in his possession; and in case of the death of any county treasurer, his legal representatives shall in like manner deliver up all such moneys, books, accounts, papers, and documents as shall come into their possession.

CHAPTER 8.

OF THE COUNTY RECORDER.

SECTION

1. A recorder's office to be kept at the county seat.
2. Recorder to give bond—its approval, penalty, and condition.
3. Bond to be filed with the secretary of state for the use of any person injured.
4. Oath of office.
5. Recorder to procure books, and record therein deeds, &c.
6. Shall make an abstract of conveyances—its contents.

SECTION

7. Shall give a receipt for conveyances left for record—its contents.
8. No fee to be charged for abstract—penalty for making such charge.
9. Conveyances to be recorded according to time of reception.
10. Index, how to be made.
11. Shall record marks and brands.
12. His fee therefor.
13. Recorder may appoint deputies.
14. Shall record town plats, &c.
15. Penalty for failure to perform duties.
16. Vacancies, how filled.

A recorder's office to be kept at the county seat.

SECTION 1. There shall be an office of record in each county in this state, to be kept at the county seat, or usual place of holding courts, which shall be called the recorder's office.

Recorder to give bond—its approval, penalty, and condition.

SECT. 2. Each county recorder, on being elected to such office, shall give bond to the state of Indiana in the penalty of two thousand dollars, with sufficient sureties, to be approved by the associate judges of the county, with condition for the prompt and faithful discharge of his duties according to law, and for the safe keeping and preservation of the records belonging to his office, and the delivery of the same to his successor in office, whole and undefaced, and for the safe keeping and delivery to the person or persons entitled thereto of all deeds and other instruments left with him for record.

To be filed with the secretary of state for the use of any person injured.

SECT. 3. Such bond shall be forwarded, by the judges taking the approval thereof, to the secretary of state, to be by him filed and preserved for the benefit of any person who may be injured or aggrieved by any neglect, malconduct, or breach of duty by such recorder in the discharge of his official duties.

His oath of office.

SECT. 4. Such recorder shall also take the oaths required of officers to support the constitution of the United States and of this state, and that he will promptly and faithfully discharge the duties of his said office.

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SECT. 5. Such recorder shall procure, at the expense of his county, sufficiently large and well bound blank books, of good materials, in which he shall record all deeds, conveyances, and other instruments in writing which shall be delivered to him, and which by law are required to be recorded. Shall procure books, and record therein deeds, &c.

SECT. 6. Such recorder shall provide and keep a fair book, in which he shall make an entry or short abstract, immediately after the reception of any deed, conveyance, or other instrument delivered to him to be recorded, specifying the date of such reception, the names of the grantors and grantees, the description of the premises conveyed, released, or affected by such deed, conveyance, or instrument, and the fees for recording the same, in the appropriate column provided therefor in the manner required by law. Shall make abstract of conveyances, and its contents.

SECT. 7. He shall also make out and deliver at the same time a receipt to the person bringing such deed, conveyance, or instrument, containing the matters embraced in such entry or abstract, and also specifying to whom or to whose order such deed is to be delivered after the same is recorded. Shall deliver receipt for conveyances—its contents.

SECT. 8. Such recorder shall not charge, take, or receive any fee or reward for making such entry or abstract, nor for executing and delivering such receipt; and if he shall violate the provisions of this section, he shall, upon due conviction upon indictment, be fined in any sum not exceeding fifty dollars. No fee to be charged for abstract. Penalty for making such charge.

SECT. 9. He shall record all deeds, conveyances, and instruments, proper to be recorded, in regular order, according to the priority of time at which each was delivered into his office for record. Conveyances to be recorded according to time of reception.

SECT. 10. It shall be the duty of each and every recorder in this state to make a complete index of all deeds and instruments in writing, which have been or may hereafter be recorded in his office, to be prefixed or annexed to the volume containing the deed or instrument therein referred to, in manner following, to-wit: The name of each grantor, promiser, or covenanter, shall be set down in alphabetical order, referring to the particular grantee, promisee, or covenantee; and also the name of each grantee, promisee, or covenantee, shall be set down in alphabetical order, referring to the proper grantor, promiser, or covenanter, so that any person hereafter, by knowing the name of one of the parties to any deed or instrument recorded, may, without delay, be referred to the same on the record. Index, in what manner to be made.

SECT. 11. It shall be the duty of the recorder of each county to record, in a book provided by him for that purpose, the ear marks of cattle, sheep, and hogs, and such marks and brands of horses, mules, and asses as any person may wish to have recorded in said book; but he shall not record the same marks or brands to two different persons of the same township, and the marks and brands of each township shall be recorded separately in said book. Record of marks and brands.

SECT. 12. The said recorder shall be entitled to receive of the persons employing him as aforesaid, the sum of twelve and Fee therefor.

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a half cents for every such entry of marks or brands, of which entry he shall, if required, deliver a certified copy to the owner.

May appoint deputies.

SECT. 13. The same powers which are now given by any law or laws of this state to the clerks of the circuit courts, to appoint deputies, are hereby extended to recorders; and each and every recorder shall be responsible for the acts of his deputy.

Shall record town plats, bonds, &c.

SECT. 14. It shall be the duty of the several recorders in this state to record all town plats, by transcribing the same in a book for their better preservation, in all counties where such has not heretofore been the practice, and all bonds and other writings which shall be brought to any of them duly authenticated.

Penalty for failure to perform his duty.

SECT. 15. If any recorder shall violate or offend against the provisions of this chapter in respect of any duty imposed upon him, or shall neglect or refuse to perform any such duty, or shall fail to make any entry or abstract as required in this chapter, or shall record any deed, conveyance, or other instrument proper to be recorded, out of its regular order or priority of time, as above required, or shall wholly neglect and refuse for three whole months after any such deed, conveyance, or other instrument has been delivered into his office to be recorded, to record the same, every such recorder for every such offence, on conviction thereof on indictment, shall be fined in any sum not exceeding three hundred dollars.

Vacancies, how filled.

SECT. 16. Whenever any vacancy shall occur in the office of recorder, by death, resignation, or otherwise, such vacancy shall be filled by the governor by an appointment pro tempore, to continue until a successor shall be duly elected and qualified.*

* By chapter 10, sections 10 and 11, the recorder is required to record copy of field notes, &c. of the original survey of townships, ranges, sections, fractional and quarter sections.

CHAPTER 9.

OF NOTARIES PUBLIC AND THEIR DUTIES, AND OF COMMISSIONERS TO TAKE DEPOSITIONS, AND THE PROOF AND ACKNOWLEDGMENT OF DEEDS.

SECTION
1. How appointed and commissioned.
2. Oath of office—before whom to be taken—how certified.
3. Governor to take bond of notary public—its penalty and condition—suit thereon, how brought.
4. Notary to procure a seal—his duty and fees.
5. May take acknowledgments, &c.—his fee therefor.

SECTION
6. May take and certify depositions and proof of deeds, &c.—his certificate to be evidence same as clerk's.
7. Fee allowed for such certificate, when to be used in another county.
8. Fees for protest and notice—none allowed for protest of promissory note or inland bill.
9. Protests made by officers of a bank not valid.

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SECTION
10. Fee for recording protest.
11. Notary's certificate of presentment and notice to be prima facie evidence.
SECTION
12. Commissioners to take depositions, and proof and acknowledgment of deeds, and how appointed.
13. Oath of office—where same to be filed.

ARTICLE 1.

Notaries public —how appointed and commissioned.

SECTION 1. The governor shall appoint and commission as many notaries public in this state as he may deem necessary, who shall hold their offices for the term of five years, if they shall so long behave well.

Oath of office, before whom to be taken, and how certified.

SECT. 2. Each notary public, as soon as he shall receive his commission, shall repair to the clerk of the circuit court of his proper county, and shall take the oath prescribed by the constitution and by law, faithfully and impartially to discharge the duties of his office; a certificate of which oath shall be endorsed on the back of his commission by said clerk.

Governor to take bond of notary public—penalty and condition—suit thereon, how brought.

SECT. 3. It shall be the duty of the governor to take bond with sufficient security from each notary public before he enters on the duties of his office, in the sum of five hundred dollars, conditioned for the due performance of the duties thereof; which bond if forfeited shall be sued for in the name of the state for the use of the party injured.

Notary to procure a seal—his duty and fees.

SECT. 4. Such notary public shall procure a seal, which shall be called the seal of the notary public: he shall, when required, make all necessary attestations and protestations, for each of which, with his certificate and seal annexed, he shall be entitled to demand and receive of the person applying therefor, the fees allowed by law.

May take acknowledgm'ts, &c., and his fees therefor.

SECT. 5. Each notary public shall and may take and certify the acknowledgment of powers of attorney, mortgages, deeds, and other instruments of writing, with or without the release and assignment of dower, as fully in every respect as any judge or justice may or can now do; for which he shall receive the compensation allowed by law to justices of the peace for the like service.

May take and certify depositions and proof of deeds, &c.—his certificate evidence same as clerk's.

SECT. 6. Each and every notary public in this state shall be authorized to take and certify all affidavits and depositions authorized to be taken and certified by justices of the peace, and to take and certify all proof of deeds, mortgages, powers of attorney, and all other instruments in writing authorized to be taken and certified by justices of the peace; and his certificate and attestation, with his official seal, shall be taken and received in all cases to be of equal verity and validity with the certificate, attestation, and seal of a clerk of a circuit court.

Fee allowed for certificate—when to be used in another county.

SECT. 7. In all cases where an authentication or certificate of a notary public shall be made for the purpose of being used in any other county than that in which such notary public is resident, the fee of such notary public shall be the same as that allowed to the clerk of the circuit court for similar services.

Fees for protest and notice.

SECT. 8. The fees of notaries public shall be as follows, to-wit: For each protest of any note, bill, bond, or other instrument in writing, the sum of fifty cents; and for each notice of

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such protest, the sum of twenty-five cents; but not more than one notice shall be chargeable for any one party to such bill, note, or other instrument, and no fees shall be allowed to any notary public for any protest on any promissory note or inland bill of exchange, and no other fees than the fees for notice of non-payment.

No fee allowed for protest of promissory note or inland bill.

Protests made by officers of a bank not valid.

SECT. 9. No protest of any bond, bill, note, or other instrument in writing, made by any officer, clerk, agent, or attorney of any bank in this state, shall be deemed of any validity or force whatever; and proof that at the time of making such protest, the notary making it was an officer, clerk, agent, or attorney of any such bank, shall be sufficient to render the same void.

Fees for recording protests.

SECT. 10. Each notary public shall, and he is hereby authorized to demand and receive for recording, if thereunto required, in a book to be kept for that purpose, seventy-five cents for every attestation, protestation, or other instrument or publication, under his proper seal, relative to foreign bills of exchange; and for recording as aforesaid relative to inland bills of exchange, twenty-five cents.

His certificate of presentment and notice prima facie evidence.

SECT. 11. The official certificate of any notary public, duly sealed with his seal, setting forth the presentment and non-acceptance or non-payment of a bill or note presented for payment or acceptance, and of the giving of notice thereof shall be presumptive evidence of the matters and things therein contained and set forth.

Commissioners to take depositions, proof and acknowledgm't of deeds, &c., how appointed.

SECT. 12. The governor of this state may appoint and commission, in any other state or territory of the United States, one or more commissioners, to continue in office during the pleasure of the governor, who shall have power to administer oaths, and to take depositions, and the proof and acknowledgment of deeds or other instruments, to be used or recorded in this state.

Oath of office, where to be filed.

SECT. 13. Before any such commissioner shall proceed to discharge any of the duties of his said appointment, he shall take and subscribe an oath, before some justice of the peace or officer authorized to administer oaths in the state for which he is appointed, that he will faithfully discharge the duties of his said appointment, which oath shall be filed in the office of the secretary of state of this state.

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ARTICLE 1.

CHAPTER 10.

OF COUNTY SURVEYORS.

SECTION
1. Office to become vacant at the end of three years—county commissioners to fill vacancies—term of appointment.
2. Oath of office—bond—clerk of circuit court to approve of, and preserve the same.
3. County commissioners may dismiss surveyor for incompetency, negligence, or misconduct, and appoint a successor.
4. Proceedings to obtain dismissal of surveyor—petition therefor—its contents, and where filed.
5. Copy of petition and notice to appear, how served on surveyor.
6. Trial.
7. Costs—judgment therefor, against whom to be rendered.
8. Shall obtain books, papers, &c., relating to his office, from his predecessor.
9. Commissioners may require surveyor to procure a copy of field notes &c. for the use and inspection of citizens.
10. Surveyor to have same recorded in recorder's office, retaining the copy.
11. Recorder shall record and deliver to surveyor such copies heretofore procured and filed with him.
12. Such copy to be preserved by surveyor, and, together with his own field notes, shall be transferred to his successor.
13. Expense of procuring and recording field notes, how paid.
14. Recorder shall certify transcripts of field notes, &c.—the same to be *prima facie* evidence—his fee therefor.
15. Owner of land may require county surveyor to establish his line or corner.
16. Notice thereof to be given to adjoining owners.
17. On proof of such notice, surveyor shall make the survey, &c.
18 How he shall proceed in establishing or relocating a corner.
19. Same subject—a record of survey to be made.
20. Surveyor may appoint deputies--shall be accountable for their acts.
21. When surveyor is interested, circuit court may appoint a surveyor.
22. Chain carriers to be sworn--surveyor may administer the oath.
23. Fees.
24. Like fees allowed for establishing corners, &c.—employers to pay—fee for perpetuating a corner.

SECTION 1. Whenever any person heretofore appointed, or who may hereafter be appointed, to the office of county surveyor shall have held the same three years, such office shall become vacant; and whenever such office shall become vacant by death, resignation, or otherwise, the board of county commissioners of the county where such vacancy may happen, shall appoint a person well qualified to discharge the duties of such office, who shall hold such appointment for three years and until his successor is appointed and qualified.

Office to become vacant at the end of three years.

County commissioners to fill vacancies—term of office.

SECT. 2. The person thus appointed shall take an oath of office, and shall give bond payable to the state of Indiana, in such penalty and with such sureties as the clerk of the circuit court shall approve; whose duty it shall be to take and approve such bond, and file and preserve the same in his office.

Oath of office—bond—clerk of circuit court to approve and preserve the same.

SECT. 3. If it shall be made to appear to the board of county commissioners, that any county surveyor is incapable of performing all and singular the duties enjoined on him by law,

County commissioners may dismiss surveyor for

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negligence, misconduct, or incompetency, and appoint a successor.

or that he has neglected or refused to do and perform any official act which he may have been required to perform, unless prevented by unavoidable accident, the board shall dismiss such county surveyor from office, and forthwith appoint a successor to fill such vacancy.

Proceedings to obtain dismissal of surveyor —Petition—its contents—where filed.

SECT. 4. If any person wishes to have a county surveyor removed from office, he shall file in the office of the auditor or clerk of the board of county commissioners, at least thirty days before the sitting of such board, a petition, setting forth the cause of complaint, whether it relate to incapacity, misconduct in office, or neglect of duty.

Copy of petition and notice to surveyor to appear, &c., how served.

SECT. 5. The auditor or clerk shall forthwith make out a certified copy of such petition, and also a summons directed to the sheriff, requiring him, within ten days thereafter, to notify such surveyor, either by reading such summons to him, or by leaving a certified copy thereof at his last place of residence. to appear at the next session of the board of county commissioners, on the first day of the session, to answer said complaint; and the sheriff shall, at the same time, leave with such surveyor at his residence, or deliver to him in person, a copy of said petition.

Trial.

SECT. 6. It shall be competent for said board, on the first day of the term, or as soon thereafter as the parties may be ready, to hear such complaint, the answer thereto, and the proof in support thereof; and to determine the same as may seem just and proper.

Costs, judgment therefor, against whom to be rendered.

SECT. 7. The board before whom such complaint may be tried, shall render judgment for costs against such petitioner if the respondent shall be acquitted, and against the respondent if he be found guilty and is removed from his said office.

May require books, papers, &c., relating to his office, from predecessor.

SECT. 8. It shall be lawful for any surveyor who shall be appointed under the provisions of this chapter, to ask, demand, and receive from his predecessor, any book or books relating to such office, which it is, by law, made the duty of such surveyor to keep, and all records, field notes, and other papers appertaining to said office; and whenever such office shall become vacant by death, resignation, or otherwise, it shall be the duty of any person or persons having the possession of such books and records, field notes, or other papers pertaining to such office, to hand the same over, on demand, to such successor in office.

Surveyors, when to procure copy of field notes, &c. for the use and inspection of citizens.

SECT. 9. The surveyor of each county shall, when directed by the board of county commissioners, procure from the register of the land office of the district in which his county is situate, a certified copy of the field notes of the townships, ranges, sections, fractional sections, and quarter sections, as originally surveyed, for the use and benefit of the citizens of said county, and which shall be at all times subject to their inspection.

Shall cause same to be recorded in recordor's office,

SECT. 10. It shall be the duty of each county surveyor in this state, when he shall have procured a copy of the field notes of the lands in his county, agreeably to the provisions of this

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chapter, to cause the same to be recorded in the recorder's office of the proper county, and retain the said copy in his own office.

retaining the copy.

SECT. 11. Where the field notes aforesaid have heretofore been procured and deposited in the recorder's office, in any county in this state, it shall be the duty of the recorder of every such county to record the said copy, and return the same to the county surveyor.

Recorder shall record and deliver to surveyor the copies heretofore procured and filed with him.

SECT. 12. It shall be the duty of each county surveyor in this state to preserve the said copy of field notes of the lands in his county, and deliver the same, together with the record book of the field notes of the corners by him re-located and perpetuated, under the provisions of this chapter, to his successor in office.

Such copy to be preserved by surveyor, and, together with his field notes, be transferred to his successor

SECT. 13. All necessary expenses incurred in procuring and recording said field notes, shall be paid out of the county treasury of the proper county, on the order of the board of county commissioners.

Expense of procuring and recording the copy of field notes, and how paid.

SECT. 14. The recorder shall, on the application of any person, give a certified transcript from said record of the field notes of the survey of any section, quarter section, or other tract of land, for which certificate the recorder shall be entitled to receive fifty cents, to be paid by the individual applying for the same; and such certificate shall be received as prima facie evidence where the original would have been received.

Recorder to certify transcripts of field notes, &c.—same to be prima facie evidence—his fee therefor.

SECT. 15. When any person, being the owner or proprietor of any land within this state, wishes to ascertain, establish, relocate, or perpetuate a corner or corners thereto, or any line or lines thereof, such owner or proprietor may require the county surveyor to run such lines, or to do such other things as may be necessary for the purposes aforesaid.

Owner of land may require county surveyor to establish his line or corner.

SECT. 16. Such owner or proprietor shall give ten days previous notice of the time of such survey to the owners of lands or proprietors adjoining such land to be affected by such survey, provided such owners or proprietors are residents of the county, and if not, such notice shall be given for three weeks successively in some newspaper, printed and published nearest to where such lands lie.

Notice thereof to be given to adjoining owners.

SECT. 17. Such surveyor, on being satisfied that notice has been given, as required in the last previous section, shall proceed to make the necessary surveys of lines, and location or relocation of corners, as the case may require.

After such notice is given, surveyor shall make survey, &c.

SECT. 18. If a corner is to be ascertained, established, or relocated, and the owners or proprietors, or any of them, wish the same perpetuated, such surveyor shall proceed so to do, and shall deposit in the place where the original stake or corner stood, or if a new corner is to be established or perpetuated, he shall deposit in the place of such corner, a stone, or other durable material, having thereon the letters and figures answering to such corner or corners.

How to proceed in establishing or re-locating a corner.

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PART 1.

Same subject.

SECT. 19. Such corner, if of wood, shall be sunk two feet beneath, and present one foot above the surface of the ground; and such surveyor shall enter in his field notes the species of corner, with one or more bearing trees, if there be any such, the kind thereof, with their diameter, and the course and distance of each such bearing tree, all of which matters before required to be done, shall be entered in a book to be by him provided and kept for that purpose.

Record thereof to be made.

Surveyor may appoint deputies—to be accountable for their acts.

SECT. 20. The principal surveyor shall have power to nominate and appoint a sufficient number of deputies to perform the duties of his office, and shall be accountable for their acts.

When surveyor is interested, circuit court may appoint a surveyor.

SECT. 21. Whenever hereafter any dispute may arise about the division of any lands, wherein the surveyor of the county in which the lands lie may be a party, or in any manner interested, it shall be lawful for the circuit court, on application of either party, to appoint some suitable person in said county, whose duty it shall be to proceed to divide the same; for which service the person so appointed shall be entitled to the same fees as county surveyors are entitled to for similar services.

Chain carriers to be sworn—surveyors may administer the oath.

SECT. 22. All chain carriers employed by county surveyors or their deputies, in the performance of any official duties which may be required of any such county surveyors or their deputies, shall take an oath for the faithful discharge of their respective duties as such; and such county surveyors and their deputies are hereby authorized to administer such oath.

Surveyor's fees.

SECT. 23. When his services are ordered by any court of record, or employed in cases where the law makes it necessary to employ a surveyor, he shall receive the following fees:

1.	For going to and returning from a review, per day, amounting to thirty miles travel, - - -	$1 25
2.	For his actual service on such review, - -	1 50
3.	For going to and returning from court, and attending the same, per day, - - - - - - -	1 25
4.	For every survey by him plainly bounded as the law directs, and for a plat of such survey, after the delivery of such plat, where the survey shall not exceed four hundred acres, - - - - -	2 00
5.	For every hundred acres of land contained in one survey, above four hundred acres, - - -	25
6.	For surveying a lot in town, - - - -	1 00
7.	For every additional lot surveyed at the same time,	25
8.	For a survey begun by him, which he is stopped or hindered from finishing, to be paid by the party requiring the survey, - - - - - - -	2 62
9.	For running a dividing line, one mile or under, -	1 25

And all division lines which may be run to divide any of the lands sold by the United States, shall be made agreeably to the laws of the United States directing the mode of surveying public lands.

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ARTICLE 1.

10. For surveying an acre of land, or less quantity, for a mill, or any other purpose, - - - - - 1 50
11. For every survey of land formerly patented, and which shall be required to be surveyed, and for a plat thereof delivered as aforesaid, the same fee as for land not before surveyed; and when a survey shall be made of any lands which are to be added to other lands in an inclusive patent, the surveyor shall not be paid a second fee for the land first surveyed, but shall only receive what the survey of the additional land shall amount to: and where any surveys shall have been actually made of several parcels of land adjoining, and several plats delivered, if the party shall desire one inclusive plat thereof, the surveyor shall make out the same for - - - - - - - - 1 50
12. For running a dividing line between any counties or townships, to be paid by such counties or townships in proportion to the number of taxable inhabitants, per mile, - - - - - - - - - 1 00
13. For receiving a warrant of survey and giving a receipt therefor, - - - - - - - - 18¾
14. For a copy of a plat of land, or a certificate of survey, - - - - - - - - - - 25

SECT. 24. He shall be entitled to demand and receive of the person or persons requiring his services, when called by him or them to ascertain, re-locate, or establish corners, or to run the line or lines of any tract or tracts of land, the same fees as above allowed for similar services; and for every corner by him perpetuated he shall be entitled to the sum of one dollar.

Persons requiring him to establish corner, &c. to pay like fees.

Fee for perpetuating a corner.

CHAPTER 11.

OF PILOTS AT THE FALLS OF THE OHIO.

SECTION
1. Governor to appoint not exceeding six pilots.
2. Pilots to give bond—bond where to be filed, and for whose use.
3. Persons aggrieved may sue on bond; judgment on penalty to stand, and scire facias may be had for other breaches.
4. Penalty for refusing to pilot.
5. Penalty for acting as pilot without authority.
6. Owners not compelled to employ pilots.
7. Pilots' fees.
8. For what cause appointment shall be forfeited.
9. Forfeiture, how ascertained and certified to governor, who shall fill vacancy.
10. Notice shall be given to pilots of such proceedings, and a copy of charges.
11. Appeal allowed.
12. Absence of pilot when to vacate office.

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PART 1.

Governor to appoint not exceeding six.

SECTION 1. The governor shall appoint skilful and experienced persons, not exceeding six in number, to act as pilots at the falls of the Ohio river in this state.

Pilots to give bond—same where to be filed—for whose use.

SECT. 2. Before any person appointed as aforesaid shall be authorized to act as such pilot, in conducting boats and other vessels over said falls, he shall execute bond to the state of Indiana, in the penal sum of five thousand dollars, conditioned for the faithful discharge of the duties of pilot as aforesaid, with sufficient surety or sureties, to be approved by the clerk of the Clark circuit court; which bond shall be filed by such clerk, and kept in his office for the use of any person who may be injured or aggrieved by the neglect or unfaithfulness of such pilot.

Persons aggrieved may sue on such bond; judgment for penalty to stand, and scire facias may be had for other breaches.

SECT. 3. Any person injured or aggrieved as aforesaid may institute suit therefor on such bond, as in the case of bonds of other officers; and no such bond shall be void on the first recovery, but any judgment thereon shall stand as a security for any other or farther breaches as to the first relator or any other person injured or aggrieved, upon which a scire facias may issue as in like cases on other bonds.

Penalty for refusing to pilot.

SECT. 4. Every pilot who shall refuse, without good cause, on tender of his proper fees being made to him, to conduct any boat over the falls, shall forfeit and pay a fine of ten dollars, to be recovered before a justice of the peace for the use of the seminary of Clark county.

Penalty for acting as pilot without authority.

SECT. 5. Every person who shall act as a pilot without being duly authorized as in this chapter provided, shall forfeit and pay a fine of twenty dollars, to be recovered before any justice of the peace for the use of the seminary aforesaid; and any person getting on any boat at or near the head of the falls, and taking the direction of the same, under pretence of being a hand or passenger, or under any other pretence whatever, shall be presumptive evidence of a violation of the provisions of this section.

Owners may pilot their own boats

SECT. 6. Nothing contained in this chapter shall be construed to compel any owner, shipper, or navigator of a boat descending the Ohio river, to employ or pay a pilot; but such person may navigate such falls at his own risk.

Pilots' fees.

SECT. 7. Every such pilot shall receive for his services the following fees:

1. For each flat bottom boat, seventy feet or over in length, the sum of three dollars.

2. For each boat under seventy feet, the sum of two dollars.

For what cause appointment shall be forfeited

SECT. 8. Should any such pilot remove from this state, or from the immediate vicinity of the falls of the Ohio, or wilfully neglect the business and duties of a pilot, or wilfully demand a greater sum for his services than he is entitled to by law, he shall forfeit his said appointment.

Forfeiture, how ascertained and certified to governor; who shall fill vacancy.

SECT. 9. Proof of such forfeiture may be made before the board of county commissioners of Clark county, and upon the same being satisfactorily shown, such board shall cause the same to be certified to the governor, who shall thereupon deem such

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appointment vacant, and appoint another person to fill such vacancy. ARTICLE 1.

SECT. 10. But no proof of such complaint shall be heard by such board until it is shown that such pilot has had ten days' notice of the time and place of hearing the same, and such pilot shall be entitled to a copy of the charges against him, if he demand the same. Notice shall be given to pilot of such proceedings, and a copy of charges.

SECT. 11. Any pilot aggrieved by the decision of said board in the premises, may appeal from the decision of said board as in other cases tried and determined by such board. Appeal allowed.

SECT. 12. Nothing contained in the preceding sections shall be so construed as to work a forfeiture of such office of pilot, when he shall have been absent on any business, if such absence do not exceed ninety days. Absence not to vacate office, unless for over ninety days.

CHAPTER 12.

OF THE ASSESSMENT AND COLLECTION OF TAXES.

ARTICLE 1. Of the persons and property subject to taxation.
ARTICLE 2. Of the place in which, and the person to whom, property is to be listed.
ARTICLE 3. Of the manner in which property shall be listed and valued.
ARTICLE 4. Of the manner of assessing taxes.
ARTICLE 5. Of the manner of collecting taxes, and the duties of the county auditor and treasurer therein.
ARTICLE 6. Of the settlements and payments to be made by the county treasurer, and the duty of the auditor and other officers therein.
ARTICLE 7. Of the proceedings relating to delinquent taxes, sales and conveyance of lands therefor, and redemption thereof.
ARTICLE 8. Regulations concerning the assessment of taxes on incorporated companies, (except the state bank,) and of the collection thereof.
ARTICLE 9. Regulations concerning the assessment and collection of taxes on individual stock in the state bank.
ARTICLE 10. Miscellaneous provisions of a general nature.
ARTICLE 11. Of certain specific taxes for county purposes.

ARTICLE I.

Of the persons and property subject to taxation.

SECTION
1. Persons subject to taxation.
2. Property subject to taxation.
3. Meaning of terms "real estate," "land," and "real property."
4. Meaning of terms "personal estate," and "personal property."
SECTION
5. Persons and property exempt from taxation: 1. Polls of Indians. 2. Persons and property of revolutionary soldiers. 3. Property of the United States. 4. Lands sold by the United States for five years.

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SECTION 5—*Continued.*
5. School houses, &c. 6. Churches, &c. 7. Buildings and property of literary, &c., institutions. 8. School lands. 9. Manual labor schools, &c. 10. Property of widow or orphan to $200. 11. Property exempt from execution.

SECTION
6. Lands sold by the state not exempt.
7. When owner of stock not to be taxed individually.
8. Indian reserves, when to be taxed.

Poll tax on whom assess'd.

SECTION 1. A poll tax shall be assessed upon every male inhabitant of this state between the ages of twenty-one and fifty years.

Property tax, on what assessed.

SECT. 2. All property, real and personal, within this state, shall be liable to taxation, subject to the exceptions hereinafter stated.

"Real estate," &c., defined.

SECT. 3. The term "real estate," as used in this chapter, shall be construed to include all lands within this state, and all buildings and other things erected on, or affixed to the same; and the terms "land" and "real property," whenever they occur in this chapter, shall be construed as having the same meaning as the term "real estate," thus defined.

"Personal estate" defined.

SECT. 4. The terms "personal estate" and "personal property," as used in this chapter, shall be construed to include all household furniture, goods, chattels, and moneys; all ships and vessels, whether at home or abroad; all moneys at interest owing to the persons to be taxed, more than they pay interest for, and all other debts owing to them from solvent persons, more than they are indebted for; all public stocks; stocks in turnpikes, bridges, insurance companies, and moneyed corporations, whether within or without this state; also, such portion of the capital of incorporated companies liable to taxation on their capital, as shall not be invested in real estate.

Of the persons and property exempt from taxation.

SECT. 5. The following persons and property shall be exempt from taxation:

Persons exempt.

1. The polls of all Indians.
2. The polls and property of all revolutionary soldiers.

Property exempt.

3. The real and personal property of the United States and of this state.
4. All lands sold by the United States, until the term of five years from the day of sale shall have expired.
5. Every school house, court house, and jail, and the land whereon such buildings are situate, and all county lands and buildings set apart for county purposes.
6. Every building erected for religious worship, and the pews and furniture within the same, and the lands whereon such building is situate, not exceeding ten acres; also, every grave yard not exceeding ten acres.
7. Every building erected for the use of any literary, benevolent, charitable, or scientific institution, or erected for the

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same purpose by any town, township or county, and the tracts of land on which such building is situate, not exceeding twenty acres; also, the personal property belonging to any such institution, town, township, city, or county, and connected with, or set apart for any of the purposes aforesaid.

8. All land granted for the use of common schools, so long as the same shall remain unsold.

9. The personal property and real estate of every manual labor school or college, incorporated within this state, when used or occupied for the purposes for which it was incorporated; such real estate not to exceed three hundred and twenty acres.

10. The personal property of every widow and orphan child, to the extent of two hundred dollars in value.

11. All property exempt from execution.

Lands sold by the state.

SECT. 6. Lands sold by the state, though not granted or conveyed, shall be assessed in the same manner as if actually conveyed.

Owner of stock.

SECT. 7. The owner or holder of stock in any incorporated company, liable to taxation on its capital, shall not be taxed as an individual for such stock.

Indian reserves.

SECT. 8. All lands reserved to or for any individual by any treaty between the United States and any Indian tribe or nation, shall be liable to taxation from the time such treaty shall have been confirmed.

ARTICLE II.

Of the place in which, and the person to whom, property is to be listed.

SECTION

9. Persons to be listed for poll tax in the township where they reside.
10. So also for their personal property, whether held as trustee, &c., or otherwise.
11. So also for all lands within such township, occupied by the owner or wholly unoccupied.
12. Occupied lands to be listed in the name of the owner, if known, otherwise in the name of the occupant; occupant paying taxes may sue owner.

SECTION

13. Unoccupied land, owner unknown, to be listed as "land of persons unknown."
14. When a township line divides a tract, how to be listed.
15. Property of incorporated companies, where listed.
16. Personal property mortgaged, to whom listed.
17. Real estate mortgaged, to whom listed.
18. Undivided real estate, to whom listed.
19. Personal estate of partners, where and how listed.

Poll, where to be listed.

SECT. 9. Every person shall be listed for his poll tax in the township where he resides when the enlistment is made.

Personal estate, where listed.

SECT. 10. Every person shall be listed in the township where he resides when the enlistment is made, for all personal estate owned by him on the first day of March of the year in

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which the same is made, including all personal estate in his possession or under his control, as trustee, guardian, executor, or administrator.

Lands, where listed.

SECT. 11. Every person shall be listed in the township where he resides when the enlistment is made, for all lands by him owned within such township, on the first day of March of the year in which the same is made, and occupied by him, or wholly unoccupied, including all such real estate owned or held by him as trustee.

Same.

SECT. 12. Lands occupied by any person not the owner thereof, shall be listed in the name of the owner, if known, otherwise, in the name of the occupant; and for the taxes, if paid by such occupant, he shall have his action against the owner.

Unoccupied lands.

SECT. 13. Unoccupied lands shall be listed in the name of the owner, if known, otherwise, as "land of persons unknown."

Lands divided by township line.

SECT. 14. When the line between two townships divides a tract of land lying in the grants to English or French emigrants, or in Clark's grant or individual Indian reserves, (surveyed differently from the United States' survey,) if listed to the owner thereof, he being a resident of either township in which a part of such tract of land may lie, or, if listed to the occupant, under the twelfth section of this chapter, the same shall be listed in the township in which such owner or occupant shall reside, and in all other cases the same shall be listed in the township in which the greater part thereof lies.

Real and personal estate of incorporated companies.

SECT. 15. The real estate of all incorporated companies liable to taxation, shall be listed in the township in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital, shall be listed in the township where the principal office or place for transacting the financial concerns of the company shall be; or if such company have no such principal office or place for transacting its financial concerns, then in the township where the operations of such company shall be carried on. In the case of toll bridges, the company owning any such bridge shall be listed in the township in which the tolls are collected; and where the tolls of any bridge, turnpike, railroad, or canal company are collected in several townships, the company shall be listed in the township in which the treasurer, or other officer authorized to pay the last preceding dividend, resides.

Personal property mortgaged.

SECT. 16. When personal property is mortgaged or pledged, it shall, for the purposes of taxation, be deemed the property of the party who has the possession.

Land mortgaged.

SECT. 17. In cases of mortgaged real estate, the mortgager shall, for the purposes of taxation, be deemed the owner, until the mortgagee shall take possession, after which the mortgagee shall be deemed the owner.

Undivided real estate of a decedent.

SECT. 18. The undivided real estate of any deceased person may be listed to the heirs or devisees of such person, without designating any of the heirs or devisees by name, until they

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shall have given notice to the auditor of the county or counties in which such real estate is situate, of the division of the same, and the names of the several heirs or devisees, and the portions allotted to each; and each heir or devisee shall be liable for the whole of such tax, and shall have a right to recover of the other heirs or devisees their respective proportions thereof when paid by him.

Personal estate of partners.

SECT. 19. Partners in mercantile and other business may be jointly listed in their partnership name, in the township where their business is carried on, for all their personal property employed in such business; and in case of being so jointly listed, each partner shall be liable for the whole tax.

ARTICLE III.

Of the manner in which property shall be listed and valued.

SECTION

20. Former appraisement list to stand as the grand levy.
21. When none has been made, the same shall be procured with maps, &c., to be filed with county auditor, and changes to be noted thereon.
22. List of lands when first becoming taxable to be procured.
23. Changes in ownership of land, and apportionment of valuation, how made on the list.
24. Auditor may examine the records of deeds.
25. Before recording, deeds shall be endorsed by the auditor.
26. Penalty on recorder for recording before such endorsement, and how recovered.
27. Copies of certain lists to be furnished assessor by county auditor.
28. Assessors, when and how to list and appraise.
29. Form of assessment roll.

SECTION

30. Manner in which persons are to be assessed as trustees, &c.
31. Valuation of lands, how to be made.
32. Valuation of lots, how to be made.
33. Valuation of personal estate, how to be made.
34. Assessor, when to demand lists from residents.
35. Contents of the lists to be furnished to assessors by owners.
36. Owner being unknown, or a non-resident, assessment how made.
37. Owner may deliver list before 25th May.
38. When necessary, a survey of land may be made, and how.
39. Changes of land to be noted on list, and on map.
40. Abstract to be made by assessor, its form and contents.
41. To be delivered to county auditor by first June.
42. Board of equalization, how constituted and duty.

Former list to stand.

SECT. 20. The appraisement list of the taxable property of this State, made under the authority of the act entitled "An act to value the property of this state," approved February 12th, 1841, shall stand and be considered as the grand levy of the state, subject to such alterations as are herein provided for.

When none shall have been made, how procured.

SECT. 21. Should no appraisement list have been made in any county, under the provisions of the act recited in the preceding section, the same shall be made in the manner prescribed

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in said act; and should the maps required by the fourth section of said act not have been procured and delivered to the assessors, the same shall be forthwith procured and delivered by the county auditors, and copies of all such maps heretofore delivered, or hereafter to be delivered, shall be retained in the office of the county auditor, and thereon, as occasion may require, shall be noted all changes that shall take place in the situation and ownership of land, so that, as far as possible, the same may exhibit the true boundaries and owner's name of each and every tract and lot of land in each county.

List of lands when first taxable, how procured.

SECT. 22. A list of lands becoming taxable for the first time, shall, under the supervision of the governor, be procured by the auditor of public accounts, from the proper land offices, at the best price for the state. He shall also, on or before the first day of March, annually, forward the same to the proper county auditors, for which service he shall be allowed no greater amount per township than is necessarily paid for the original.

Change in the ownership of lands.

SECT. 23. Whenever partition shall have been made, or other change taken place in the ownership of any tract or lot of land, or any part thereof, by sale and conveyance, or by devise or descent, on receiving satisfactory information thereof, the county auditor shall transfer the same on the last appraisement list, and apportion the same, and the valuation thereof, to the several owners; such apportionment of value to be made by agreement of the parties, either in writing filed with, or personally in presence of the auditor, he being satisfied of the justice thereof; otherwise to be ascertained by the assessor.

Records may be examined by auditor.

SECT. 24. The county auditor shall have the right to examine the record of deeds and wills in his county without charge, to enable him to discharge the duty required of him in the preceding section.

Deeds to be endorsed by auditor.

SECT. 25. Before recording any deeds of partition or conveyance of any land, the recorder shall require the endorsement thereon of the auditor of the proper county, which such auditor is hereby required on demand to make, that the land therein mentioned has been "duly entered for taxation," or that it is "not taxable."

Penalty for recording without such endorsement.

SECT. 26. If any recorder shall record any deed without such endorsement thereon, he shall forfeit and pay the sum of five dollars, to be recovered by action of debt, before any justice of the peace having jurisdiction, in the name of the county, for the use of the county seminary.

Lists to be furnished assessor by co. auditor.

SECT. 27. The county auditor shall, annually, on or before the first day of March, make out and deliver to the assessor of the county, on demand, a copy of the last preceding assessment roll; also, a list of all lands which he may ascertain to have become subject to taxation, and not before listed and appraised for that purpose; and also, of all changes in the ownership of land which have come to his knowledge since the last appraisement.

Duty of assessors.

SECT. 28. The assessors of the several counties, between the first day of March and the twenty-fifth day of May in each

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year, shall proceed to ascertain by diligent inquiry, the names of all the taxable inhabitants in their respective counties; and also, all the taxable property, real and personal, within the same. ARTICLE 3.

SECT. 29. They shall prepare a roll, in which they shall set down in separate columns, and according to the best information in their power: Ib.

1. The names of all the taxable inhabitants.
2. A concise description of all the real estate taxable to each, except city or town lots.
3. The value of the same without improvements.
4. The value of improvements.
5. Description of city or town lots taxable to each.
6. Value thereof without improvements.
7. The value of the improvements.
8. The value of personal estate taxable to each.

SECT. 30. When a person is listed as trustee, guardian, executor, or administrator, he shall be stated as such, with the addition to his name of his representative character, and such listing shall be carried out in a separate line from his individual property. A trustee, &c. how listed.

SECT. 31. All lands and improvements erected or built thereon or affixed thereto, shall be valued at their true value in money, taking into consideration the fertility and quality of the soil, the vicinity of the same to public roads, towns, villages, navigable rivers, water privileges on the same, or location on the route of a canal or railroad, with any other local advantages of situation, upon actual view of the premises. Valuation, how made of lands.

SECT. 32. In-lots and out-lots in all cities, towns, and villages, with the improvements erected or built thereon, or affixed thereto, shall be valued at their true value in money, taking into consideration the local advantages of situation, upon actual view of the premises. Of lots.

SECT. 33. All personal property, (except stock of the state bank of Indiana,) taxable under the second section of this chapter, shall be valued at its true cash value, upon the statement of the owner. Of personal estate.

SECT. 34. The assessor shall, between the times specified in the twenty-eighth section of this chapter, call upon each and every person resident in his county, for a list of all their real and personal property liable to taxation, and not already entered on his list and valued; and for a statement of all changes made in their real estate, and improvements made thereon, or destruction or removal of the same since the last appraisement, and shall make a true valuation of the same. Assessor to call on residents for a list.

SECT. 35. The list given by the owner, or taken by the assessor aforesaid, shall particularly set forth the name of the owner or owners, the number of acres of land in each particular tract, lot, section, or subdivision thereof, and the number of the entry, location, and survey, and water course, or other special description, as the nature of the general or particular survey Contents of such list.

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may require; and in the English and French grants, Clark's grant, and Indian reserves (where the survey of the latter is different from the United States' surveys) shall also set forth the name of the original owner, and the quantity of land contained in the original tract of which the tract listed is a part or subdivision; also, all city, town, or village in or out-lots, with the numbers thereof, as described on the recorded plan of said city, town, or village, or the parts thereof, if it has been subdivided; also, all improvements thereon, and all personal property owned or possessed by such person or persons, or bodies corporate or politic, and liable to taxation.

If owner is unknown, &c.

SECT. 36. If the owner of any property liable to taxation shall be unknown, or a non-resident, or absent, or unable to give in a list when called upon by the assessor, it shall be the duty of the assessor to make a list thereof from the best information he can obtain.

Owner may subsequently deliver list.

SECT. 37. In every case mentioned in the preceding section, if the owner of any such property shall deliver to such assessor by the twenty-fifth day of May, a correct list of his property, in manner and form as prescribed in section thirty-five, the assessor shall receive the same, and correct his list thereby.

When survey shall be made.

SECT. 38. If the assessor cannot otherwise obtain a correct description of any tract or lot of land, he shall notify the county auditor, who shall cause a survey and two maps to be made by the county surveyor, for the purpose of ascertaining the situation and quantity thereof; and the expense of making such maps and survey shall be paid out of the county treasury, and shall be added to the tax on such tract or lot.

Changes in condition of real estate, how noted.

SECT. 39. All changes in the condition, description, or ownership of real estate noted on the assessor's list, shall also be entered on his map, and such returns thereof made to the county auditor as may enable him to make the like entries.

Abstract to be made by assessor, and its contents.

SECT. 40. The assessor of each county shall make an abstract from the appraisement list taken as hereinbefore provided, and shall distribute the polls and property, and valuation thereof, under the head of the respective townships wherein the same shall be subject to taxation, to-wit: All land in the civil township wherein the same may be situate; all other property and polls, (except when herein otherwise expressly provided for) under the head of the township where the owner or individual may reside; and if any tract of land lying in the grants to English or French emigrants, or in Clark's grant, or in individual Indian reserves, (surveyed differently from the United States' surveys) shall be divided by any township line, such tract shall be placed under the head of that township in which the greater part thereof lies, unless the owner thereof shall reside in one of the townships in which a part of such tract shall be situate, in which case such tract shall be placed in the township of the owner's residence, and such whole tract shall be set down as aforesaid, until the same shall be divided at or near the

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township line, when it shall be listed in the respective proper townships.

Abstract, to whom delivered, and when.

SECT. 41. Such abstract, together with the original list and appraisement, the assessor shall deliver to the county auditor, on or before the first Monday of June, annually.

Board of equalization, how constituted, and duty.

SECT. 42. The board of county commissioners, auditor, and assessor, shall meet at the seat of justice of each county on the first Monday of June, annually, and shall constitute a board of equalization, who shall have power to hear and determine the complaint of any owner of property or poll listed, respecting the same, and the valuation of any such property, made subsequent to the preceding first day of March, and shall correct any list or valuation as they may deem proper, and shall have power to equalize the valuation made by the assessor, either by adding to or deducting from his valuation such sums as to them, or a majority of them, shall appear just and equitable.

ARTICLE IV.

Of the manner of assessing taxes.

SECTION

43. Taxes to be assessed on polls and on property; 1. For state purposes. 2. For county and road purposes.
44. Duplicate of taxes, when to be made, and form.
45. The same.
46. Property destroyed shall be struck from the list.
47. List of delinquent lands paid into the state treasury to be sent to county auditor.
48. Manner of adding up and carrying out on the duplicate.
49. The same.
50. Copy of duplicate, when delivered to the treasurer.
51. Abstract thereof to be sent to state auditor, and its contents.
52. Corrections in duplicate, how made.

Taxes to be assessed on polls and property.

SECT. 43. All taxes for the support of the government of the state shall be assessed on polls and on property, listed and valued, in an equal and rateable proportion, (except as to the tax on stock in the state bank,) in the following manner, to-wit:

State taxes.

The amount necessary to be charged on each poll and on each one hundred dollars worth of property, for state expenditures, shall, from time to time, be fixed by law; and the amount to be charged on each poll, and the amount to be charged on each one hundred dollars worth of property for county expenditures and for road purposes, shall be determined by the board of county commissioners at their annual meeting in June.

County taxes.

Duplicate of taxes, how and by whom made.

SECT. 44. The auditor of each county shall, annually, between the first Monday of June and the fifteenth day of August, make out a duplicate of taxes assessed in such county, according to the forms which shall be furnished by the auditor of state, and in doing so he shall enter in separate columns, first, all lands

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PART 1.

in each civil township, with the names of the owners in alphabetical order, the value of the land without improvements, and, opposite to this, the value of the improvements, and opposite to this, the value of such land with improvements; secondly, in like order he shall enter all town in-lots and out-lots, situate in such township, with the improvements thereon; thirdly, in its place, all corporation stock, (except the state bank stock); fourthly, all personal property subject to taxation, and which shall be charged, together with the poll tax, in the civil township where the owner resides; fifthly, he shall number each organized township in regular progression, as the same shall stand entered on his duplicate, and the same townships shall retain the same numbers from year to year; and, sixthly, he shall number each name in each township in regular progression.

Same.

SECT. 45. The county auditor making out such duplicate, shall be careful to enter thereon all the lands previously entered for taxation, with the valuation thereof as hertofore assessed; and all such lands as by mistake or neglect shall have been omitted to be entered; also, all such lands as shall be found to have become subject to taxation since the last assessment, with such valuation as shall be affixed thereto by the county assessor; and he shall enter the corporation stock and personal property, according to the list of the assessor last returned, giving a pertinent description of all property thus entered on his duplicate, and duly enter all transfers of land noted in his office since the last assessment, and carry into effect all alterations which shall be made in the assessor's list by the board of equalization.

Property destroyed to be struck from duplicate.

SECT. 46. When any building or personal property, listed and valued for taxation, shall be consumed by fire, or otherwise destroyed, the auditor, on being satisfied thereof, shall strike the same from his duplicate, or deduct the proper proportion from the valuation of the land or other property with which the same may stand charged on such duplicate.

List of delinquent lands paid into state treasury.

SECT. 47. On the first Monday in June the auditor of state shall transmit to the respective county auditors a list of all delinquent lands on which taxes shall have been paid into the state treasury within the preceding year.

Form of duplicate.

SECT. 48. The county auditor shall estimate, in dollars and cents, rejecting fractions of a cent, and set down on such duplicate, in separate columns, the state, county, and road tax, chargeable on the valuation of the property contained in such duplicate; also the amount of taxes on such property returned delinquent for any preceding year and remaining unpaid, and a penalty of ten per cent. on the amount of such tax; also, the state and county poll tax; and shall carry out the whole amount into a column of totals.

Same.

SECT. 49. He shall add up and set down on each page of such duplicate, the several columns containing the valuations of real and personal estate, the taxes charged, and the number of acres, carrying the same forward from page to page to the close

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of each township, and at the end of the duplicate he shall recapitulate the several townships, and add up and set down the aggregate of the above items for the whole county. ACTICLE 5.

Copy of duplicate to be delivered to Tr'r. and when.

SECT. 50. He shall cause a copy of such duplicate to be delivered to the treasurer of his county, on or before the fifteenth day of August in each year.

Abstract to be furnished to the aud. of state.

SECT. 51. He shall also make out and cause to be transmitted by mail to the auditor of state, on or before the first day of October in each year, a complete abstract of all the property listed in each township, the valuation thereof, the number of polls, the amount of each kind of tax, and the aggregate thereof in the county, and certify the same, as also the rate of each kind of tax assessed.

Errors in duplicate, how corrected.

SECT. 52. He shall, from time to time, correct all errors which he may discover in his duplicate, either in the name of the person charged with taxes, the description of the property, or amount of tax charged, and when such correction is made after the duplicate has been delivered to the treasurer for collection, the auditor shall give to the person to be benefitted thereby, a certificate of such correction, to be presented to the treasurer, who shall make the like correction on his duplicate, and keep such certificate as his voucher on settlement with the auditor.

ARTICLE V.

Of the manner of collecting taxes, and the duties of the county auditor and treasurer therein.

SECTION

53. County treasurer, when to receive the duplicate.
54. County treasurer when to attend in each township, and when at his office.
55. Notice to be given of the amount of tax, and of the time when treasurer will attend to receive.
56. Taxes may be distrained for after 1st December with five per cent., &c.
57. Notice of sale.
58. Manner of sale, and disposition of surplus.
59. Treasurer allowed the same fees as a constable except mileage.
60. When distress allowed before 1st December.

SECTION

61. Treasurer may distrain after his settlement.
62. When part payment of taxes may be made, and its effect.
63. Lien for taxes on real estate, attaches 1st March.
64. Extends to all the property of owner situate in the same county.
65. When a part payment may be applied to a particular tract, and its effect.
66. Ten per cent. penalty and interest to be assessed on taxes returned delinquent.
67. Treasurers shall give receipt for taxes, and its contents.

Duplicate, when to be received by treasurer.

SECT. 53. The county treasurer shall receive from the county auditor the duplicate of taxes whenever presented between the first Monday in June and the fifteenth day of August.

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Treasurer, when to attend in each township.

SECT. 54. Immediately on receiving such duplicate, he shall proceed to collect the same, and for that purpose shall, before the first day of October, attend at the place of holding elections in each township for the space of one day, and as much longer as the board of county commissioners shall direct, and after the first day of October until the first day of December, he shall, for the same purpose, attend at his office at the seat of justice.

When at his office.

Notice to be given, and contents thereof.

SECT. 55. He shall forthwith cause notices to be posted up in three public places in each township throughout his county, one of which shall be at the place of holding elections in each township, and also cause the same to be published in some newspaper having general circulation in his county, (if any there be,) for six successive weeks, stating in such notices the amount of tax charged for state, county, road, or other purposes on each one hundred dollars valuation; also, the amount of state and county poll tax; also, on what day he will attend at the place of holding elections in each township, for the purpose of receiving taxes.

When county treasurer may distrain for taxes.

Penalty.

SECT. 56. In case any person shall refuse or neglect to pay the tax imposed on him, the county treasurer shall, after the first day of December, levy the same, together with five per cent. damages, and the costs and charges that may accrue, by distress and sale of the goods and chattels of such person as ought to pay the same, wheresoever the same may be found within the county.

Notice of sale.

SECT. 57. The treasurer shall give public notice of the time and place of sale, and of the property to be sold, at least ten days previous to the day of sale, by advertisements to be posted up in at least three public places in the township where such sale shall be made.

Manner of sale and disposition of surplus.

SECT. 58. Such sale shall be by public auction, and no more property shall be sold than sufficient to pay the tax, costs and charges; if convenient, to be sold in parcels, and if sold for more than the amount necessary the surplus shall be returned to the owner of such property.

Fees.

SECT. 59. The treasurer shall be allowed the same fees and charges, except mileage, for making distress and sale of goods and chattels for the payment of taxes as may be allowed by law to constables for making levy and sale of property on execution.

Distress when person about to remove.

SECT. 60. In case the treasurer shall have cause to fear that any person charged with tax is about to remove from the county without payment of his tax, he may, at any time before the first day of December, in like manner levy such tax, costs, and charges, by distress and sale.

Power to distrain, how long to continue.

SECT. 61. The power to levy and collect shall continue in such treasurer after his return and settlement with the county auditor, until the taxes shall be paid, should goods or chattels of the delinquent be found within his county.

Part payment of tax, when allowed.

SECT. 62. The treasurer shall receive the tax on a part of any real estate charged with taxes, provided the person paying

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such tax shall furnish a particular specification of such part, and shall pay a like proportion of all the several taxes charged thereon for state, county, road, or other purposes; and if the tax on the remainder of such real estate shall remain unpaid, the treasurer shall enter such specification on his return to the county auditor, to the end that the part on which the tax remains unpaid may be clearly known; but such payment shall not discharge any lien of the state as provided for in the sixty-fourth section of this chapter.

Not to discharge lien for residue.

SECT. 63. The lien of the state for all taxes for state, county, school, road, or township purposes, shall attach on all real estate on the first day of March, annually; and such lien shall be perpetual for all taxes due from the owner thereof, which have heretofore accrued, or shall hereafter accrue, with the interest and penalties in each case, until payment; which lien shall in no wise be affected or destroyed by any sale or transfer of any such real estate.

Lien for taxes, when it attaches.

SECT. 64. All the property, both real and personal, situate in any county, shall be liable to the payment of all taxes, penalties, interest, and costs charged to the owner thereof, in such county, and no partial payment of any such taxes, penalties, interest, or costs, shall discharge or release any part or portion of such property, until the whole be paid.

Its extent.

SECT. 65. If any such partial payment be made, and the payer desires it to be applied on any particular property, real or personal, the property so designated shall not be sold for the residue of the taxes due, if property of the same description can be found sufficient to make the balance due.

Part payment.

SECT. 66. There shall be a penalty assessed of ten per cent. upon the amount of taxes returned delinquent, which the persons or property assessed shall be liable to pay, together with interest upon the whole amount until paid.

Penalty on delinquent.

SECT. 67. Whenever any tax is paid, the treasurer shall note the same on his duplicate, and shall give to the person paying the same a receipt, specifying the amount paid, what paid for, and the property on which the same was assessed, according to its description, and the number of the owner's name on the duplicate.

Receipt for taxes; form thereof.

ARTICLE VI.

Of the settlement and payments to be made by the county treasurers, and the duty of the auditor and other officers therein.

SECTION

68. Settlement to be made by the treasurer with county auditor.—1. Delinquent list, how made. 2. Signed and sworn to by treasurer. 3. Recorded and sent to state auditor. 4. Townships kept separate. 5. Amount for which treasurer shall be liable. 6. Balances to be certified.

69. Payment, when and how to be made to state treasurer.

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SECTION
70. Mileage to be allowed treasurer.
71. Per centage to be allowed treasurer.
72. County, road, and other taxes, how accounted for.
73. Treasurers failing to settle, how dealt with.
74. Treasurers failing to pay, how dealt with.
75. When the county auditor shall sue treasurer; no stay of execution or appraisement allowed.
76. Continuance, when allowed—scire facias against other defendants.
77. Account, when certified by state auditor, to be conclusive evidence.
78. Set-off and payment, when to be allowed.
79. County auditor may be a witness, and his books evidence.
80. Sheriff, when to pay over taxes collected from a delinquent treasurer.
81. Penalty on sheriff for neglect.
82. Liability of deputy treasurers.

Manner of settlement.

SECT. 68. The county auditor and treasurer shall attend at the office of said auditor on the second Monday in January, annually, and said treasurer shall then and there make settlement with said auditor for the amount of taxes with which said treasurer is to stand charged, as follows:

Delinquent list.

1. The auditor shall take from the duplicate in the hands of the treasurer, for collection, a list of all such taxes as said treasurer shall have been unable to collect, therein describing the property on which such delinquent taxes are charged, as the same is described on such duplicate, and shall note therein, in a marginal column, the reasons assigned by such treasurer why such taxes could not be collected.

To be signed and sworn to.

2. Such list shall be signed by the treasurer, and he shall also testify to the correctness thereof under oath or affirmation, to be administered by the auditor.

Record to be transmitted to auditor of state.

3. The auditor shall forthwith record such list of delinquencies in his office, and deliver the same to the treasurer, who shall deliver the same to the auditor of state at the time he makes settlement with him, as hereinafter required.

Townships to be kept separate.

4. In making such delinquent list, the delinquencies of each township shall be kept separate and distinct.

Balance due from treasurer.

5. After deducting the amount of taxes so returned delinquent, and the collection fees allowed the treasurer from the several taxes charged on the duplicate, in a just and rateable proportion, the treasurer shall be held liable for the balance.

How certified to state auditor.

6. The auditor shall certify, in such manner as the auditor of state shall direct, the balance due to the state, the balance due to the county, the balance due for road purposes, and the balance due to the townships or school districts therein, which certificate he shall deliver to the treasurer, who shall deliver the same to the auditor of state, at the time he makes settlement with him, as hereinafter provided.

Payment to state treasurer.

SECT. 69. Each county treasurer shall, on or before the fourth Monday of January, pay over to the state treasurer all the moneys found due for state revenue, according to the certificate of settlement with the auditor of his county, deducting therefrom his travelling fees, and shall take a receipt from said

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treasurer for the money so paid, which he shall deposite with the auditor of state, who shall give him a quietus.

Mileage.

SECT. 70. The sum of eight cents per mile shall be allowed to each county treasurer, for travelling fees, in going to and returning from the seat of government, in order to pay into the state treasury the moneys received by him for state purposes, to be computed by the auditor of state according to the distance on the route most usually travelled.

Treasurer's per centage.

SECT. 71. The fees to be allowed the county treasurer, for the collection of taxes, shall be eight per centum on the first one thousand dollars, seven per centum on any sum between one and two thousand dollars, six per centum on any sum between two and three thousand dollars, five per centum on any sum between three and four thousand dollars, four per centum on any sum between four and five thousand dollars, and three per centum on any sum over five thousand dollars by him collected as aforesaid.

County, road, and other taxes, how accounted for.

SECT. 72. The revenue collected for county, road, and other purposes shall be paid over, and settlement therefor made, as is provided in the several chapters and sections relating thereto, and to the duties of the county auditors and treasurers.

Treasurers neglecting to settle, how dealt with.

SECT. 73. If any county treasurer shall refuse or neglect to make return or settlement with the auditor of his county, as in this chapter required, he and his sureties shall be held liable to pay the full amount of the taxes charged on the duplicate, respecting which he so refuses or neglects to make return or settlement, together with interest from the time when such return or settlement should have been made, and ten per cent. damages.

Treasurers neglecting to pay, how dealt with.

SECT. 74. If any such county treasurer shall refuse or neglect to pay over all moneys, as provided herein, he and his sureties shall be held liable to pay the full amount which he should have paid over, together with interest and ten per cent. damages.

County auditor to sue.

SECT. 75. In any such case, the county auditor, on being instructed to that effect by the auditor of state, or by the board of county commissioners, shall cause suit to be instituted against such county treasurer and his sureties; and no stay of execution or appraisement of property shall be allowed on a judgment rendered or execution issued in such suit.

No stay or appraisement.

No continuance.

SECT. 76. No such suit shall be continued (without the consent of the attorney prosecuting the same) for want of service of process on all the defendants, but judgment may be rendered against the defendants on whom process has been executed; and by process of scire facias the other defendants may be made parties to such judgment, at any subsequent term of the court in which such judgment was rendered.

Scire facias against defendants not served.

Evidence.

SECT. 77. The stated account of the treasurer against whom suit is brought, certified by the auditor of state, as truly transcribed from the account current against such treasurer, on the books of said auditor's office, authenticated by the state seal, shall be conclusive evidence of the demand of the state against such treasurer and his sureties.

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Set-off, &c., when to be allowed.

SECT. 78. No payment, set-off, or claim of credit, shall be allowed in any such suit, in favor of the treasurer or his sureties, unless the same shall have first been presented to the auditor of state, and allowed or rejected by him, unless the same could not, by using due diligence, have been so presented for his determination thereon before the trial of such suit.

Auditor may be a witness, and his books evidence.

SECT. 79. In all suits brought against the county treasurer and his sureties, the county auditor shall be a competent witness, and all books and papers belonging to his office shall, when proved by the oath of the auditor, be admissable testimony.

Duty of sheriff; collecting from a delinquent treasurer.

As to county taxes.

State taxes.

SECT. 80. The sheriff, or other officer who shall collect any money from a delinquent county treasurer or his sureties, shall, within ten days after the collection thereof, pay into the county treasury such portion thereof as shall belong to the county, and within thirty days after such collection shall pay into the state treasury the portion belonging to the state, retaining the same travelling fees herein allowed to the county treasurers, or he shall pay the same over in such other manner as the auditor of state may direct.

Penalty on sheriff for neglect.

SECT. 81. If any sheriff, or other officer to whom any execution against a delinquent treasurer or his sureties shall be delivered, shall neglect or refuse to execute the same, or shall neglect or refuse to pay over any money collected thereon, he and his sureties shall be liable to the same penalties, and to be proceeded against in the same manner as herein provided in relation to delinquent treasurers.

Penalty on deputy treasurers.

SECT. 82. If any deputy treasurer shall fail or refuse to pay over to his principal, on demand, any taxes or other money by him collected as deputy treasurer, the same proceedings may be had, and penalties recovered against him and his sureties as is herein provided against delinquent treasurers.

ARTICLE VII.

Of the proceedings relating to delinquent taxes, sales and conveyance of lands therefor, and redemption thereof.

SECTION

83. Delinquent taxes may be paid: 1. Into county treasury at any time. 2. When into state treasury.
84. County treasurer's receipt to be filed with county auditor.
85. State treasurer's receipt to be filed with state auditor, and his quietus with county treasurer.
86. Levy and sale, when valid after payment into state treasury, and proceedings thereon.

SECTION

87. County portion of such payments, how accounted for.
88. State portion, how accounted for.
89. Record of lands remaining delinquent, when and how made.
90. Copy thereof to be published with a notice of sale.
91. Record of such notice, and manner of publication to be made.
92. Manner in which sale shall be made.
93. Same.

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SECTION
94. When more than one tract is for sale, owned by the same person.
95. When less than the whole tract is sold.
96. Purchaser to pay, penalty for failure, and proceedings thereon.
97. County auditor to clerk at sales, and make record thereof.
98. To give purchaser certificate, its contents and effect.
99. Certificate, how assignable.
100. Owner, or any other person, may redeem at any time within two years, and how.
101. Saving as to infants, idiots, femes covert, and insane persons.
102. When purchasers shall pay for improvements.
103. Not if made before expiration of two years.
104. Undivided part may be redeemed.
105. Person claiming an undivided share in a lot, out of which an undivided part has been sold, may redeem.
106. Person claiming a specific part of a lot, may redeem.
107. Person claiming a specific part of any lot, out of which an undivided part shall have been sold, may redeem.
108. Person claiming a specific part of a lot, out of which a part belonging to some other person has been sold, may pay his proportion of the sum due.
109. In case of partial redemption, the quantity sold to be reduced.
110. Land of one person sold for taxes, assessed conjointly on his lands and the lands of another, may be redeemed.
111. If land be conveyed, owner may recover a proportional share of the value thereof.
112. Judgments under two last sections to have priority of certain liens.
113. After two years, county auditor to convey.
114. When two or more lots to be included in same conveyance.
115. Such conveyance to be executed by county auditor, and to be prima facie evidence.
116. If auditor shall discover that sale is invalid, not to convey, but refund money, &c.
117. Conveyance not valid if land was not taxable, or taxes were paid.
118. If invalid from any other cause, lien of state vested in purchaser.
119. Not invalid for being assessed in wrong name.
120. County auditor to make deeds for land sold under former laws.
121. When conveyance made, certificate to be cancelled; proof received in case of lost certificate.
122. Register of conveyances to be kept, and its contents.
123. When lands redeemed, entry to be made on the record.
124. Lands not sold to be forfeited to state, and continued on the duplicate.
125. Shall be annually offered for sale, and may be redeemed.
126. The records respecting delinquent lands, sales, &c. to be prima facie evidence.

ARTICLE 7.

Payment of delinquent taxes.

SECT. 83. Delinquent taxes may at any time before land is sold therefor, with the penalty, interest, and costs thereon, be paid as follows:

Into county treasury, when.

1. Into county treasury at any time.

Into state treasury, when.

2. Into the state treasury at any time after the return of the delinquent list to the auditor of state, until the third Monday of September, annually.

County treasurer's receipt, where filed.

SECT. 84. In case of such payment into the county treasury, the person paying shall file the treasurer's receipt with the county auditor, and take his receipt in place thereof.

State treasurer's receipt, where filed.

State auditor's, where filed.

SECT. 85. In case of such payment into the state treasury, the person paying shall file the treasurer's receipt with the auditor of state, and take his receipt therefor, which he shall file with the treasurer of the proper county.

Levy and sale after payment,

SECT. 86. Any levy or sale of property for delinquent taxes,

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made after such payment into the state treasury, shall be valid, if made before the filing of such receipt with the county treasurer; but after the filing such receipt, proceedings on such levy shall be stayed, on payment of costs and charges; or if property shall have been sold, the owner shall be entitled to a return of the proceeds, after deducting costs and charges.

and proceedings.

Payments, how apportioned between state and county.

SECT. 87. The portion belonging to any county, of such payments made into the state treasury, shall be certified to the county auditor by the state auditor, and be allowed in settlement with the county treasurer for state revenue due from such county for the current year.

Same.

SECT. 88. The portion belonging to the state, of such payments made into the county treasury, shall be certified to the auditor of state by the county auditor, and paid to the state treasurer by the county treasurer, at the time and in the manner provided for certifying and paying over state revenue.

Record of delinquent taxes.

SECT. 89. On the first day of October, annually, the county auditor shall make out and record, in a book to be provided for that purpose, a list of all lands returned and remaining delinquent for taxes, describing such lands as the same are described in the tax duplicate, and charging them with the amount of delinquent tax, with interest, and a penalty of ten per centum on such taxes, also with the taxes of the current year, and shall certify to the correctness thereof, with the date when the same was recorded, and sign the same officially.

Copy to be published.

SECT. 90. He shall cause a copy of such list to be immediately published, for four weeks successively, once in each week, in some newspaper having general circulation in his county, if any there be; otherwise by three copies posted up in public places in each township of his county, to which shall be attached, and in like manner published, a notice that so much of said lands as may be necessary to discharge the taxes, interest, and charges which may be due thereon, or due from the owner thereof at the time of sale, will be sold at public auction, at the court house in such county, on the first Monday in January next thereafter.

Notice of sale.

Copy of notice to be recorded, and the manner of publication.

SECT. 91. The county auditor shall, on or before the day of sale, insert at the foot of such list on his record, a copy of such notice, and certify on said record immediately following such notice, the manner in which the same was published, giving the name of the paper in which the same was published, and the length of time during which it appeared.

Manner of sale.

SECT. 92. On the day mentioned in the notices, the county treasurer shall commence the sale of such lands, and shall continue the same from day to day, until so much of each parcel assessed, or belonging to each person assessed, shall be sold as will pay the taxes, interest, and charges thereon, or chargeable to such person in said county.

Same.

SECT. 93. The person offering at said sale to pay the required sum for the least quantity of any tract, shall be considered the purchaser of such quantity.

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ARTICLE 7.

When more than one tract.

SECT. 94. When more than one tract belonging to the same person shall be for sale, at the same time, in the same county, each such tract as offered, shall be for the payment of the whole sum due from such owner on all such delinquent lands, or otherwise; and if no person shall bid off a part or the whole of such tract for the sum required, the said tract shall then be offered to the highest bidder; and if any amount shall yet remain due, the other tracts shall be proceeded with in like manner, until the required sum shall be realized.

When less than the whole tract is sold.

SECT. 95. When less than the whole of any tract of land shall be sold, the quantity sold shall be taken off and laid out in a square form, as near as practicable, at the most northwesterly corner of the tract; and when less than the whole of any in-lot or out-lot of any town shall be sold, the part sold shall be taken off and laid out, so that it shall extend from the main or principal street, road, or alley, forming the most convenient front to such lot, to the rear of such lot, and to bound the same by lines as nearly parallel with the outlines of such lot as practicable.

Purchaser, when to pay.

SECT. 96. The purchasers at such sale shall immediately pay the amount of their respective bids to the treasurer; or on their failure so to do, the land shall be again forthwith offered for sale, the same as if no sale had been made; and the purchasers so failing shall forfeit and pay, for the use of the common school fund of the county, a penalty of twenty-five per centum on the amount of their bids, to be recovered by action of debt, in the name of the treasurer, before any justice of the peace or court having jurisdiction thereof.

Proceedings on failure.

Penalty.

Duty of county auditor on sale of lands.

SECT. 97. The county auditor shall attend as the clerk of the sales of such delinquent lands, and shall enter the same on a sufficient record book, giving a description of the proper tract or lot, showing how much of each was sold, to whom, and the price, or whether the same remain unsold; a certified copy of which he shall send to the auditor of state by the county treasurer, at the time such treasurer shall make his annual payment of state revenue.

To record sales.

County auditor to give purchaser a certificate—its contents and effect.

SECT. 98. After payment shall have been made, the county auditor shall give to the purchaser a certificate in writing, describing the land so purchased, the sum paid, and the time when the purchaser will be entitled to a deed; which certificate shall entitle the holder to the possession of the premises therein described.

Certificates assignable, and how.

SECT. 99. The said certificate shall be assignable; but no assignment thereof shall be valid unless acknowledged before some justice of the peace or the proper county auditor, and recorded in such auditor's office.

Land may be redeemed, when and how.

SECT. 100. The owner or occupant of any land sold for taxes, or any other person, may redeem the same at any time within two years after the last day of such sale, by paying to the county treasurer, for the use of the purchaser, his heirs, or assigns, the sum mentioned in his certificate, and the amount of all subsequent taxes paid, with fifty per centum on the whole

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sum, and interest from the date of purchase or from the time of payment.

Infants, &c.

SECT. 101. Infants, idiots, femes covert, and insane persons, may redeem any lands belonging to them, sold for taxes, within two years after the expiration of such disability.

Pay for improvements, when made by purchaser.

SECT. 102. In case any lasting and valuable improvements shall have been made by the purchaser at a sale for taxes, or by any person claiming under him, and the land on which the same shall have been made shall be redeemed as aforesaid, the premises shall not be restored to the person redeeming until he shall have paid or tendered to the adverse party the value of such improvements; and if the parties cannot agree on the value thereof, the same proceedings shall be had in relation thereto as shall be prescribed in the law existing at the time of such proceeding for the relief of occupying claimants of land.

Same.

SECT. 103. No compensation shall be allowed for improvements made before the expiration of two years from the date of the sale for taxes.

Undivided part may be redeemed.

SECT. 104. Any person claiming an undivided part of any land sold for taxes, may redeem the same, on paying such proportion of the purchase money, interest, penalty, and subsequent taxes, as he shall claim of the land sold.

Same.

SECT. 105. Any person claiming an undivided share in any land out of which an undivided part shall have been sold for taxes, may redeem his undivided share by paying such portion of the purchase money, interest, penalty, and subsequent taxes as he claims of the lands sold.

Same.

SECT. 106. Any person claiming a specific part of any lands sold for taxes, may redeem his specific part, by paying such proportion of the purchase money, interest, penalty, and subsequent taxes as his quantity of ground shall bear to the whole quantity sold.

Same.

SECT. 107. Any person claiming a specific part of any lands, out of which an undivided part shall have been sold for taxes charged on the whole tract or lot, may redeem his specific part, by paying such proportion of the purchase money, interest, penalty, and subsequent taxes, as his quantity of acres shall bear to the whole quantity taxed.

Same.

SECT. 108. Any person claiming a specific part of any lands, out of which a specific part belonging to some other person shall have been sold for taxes charged on the whole tract or lot, may exonerate himself from all liability to contribute to the owner of the part sold, by paying into the county treasury, at any time before the expiration of the time allowed for redemption, such proportion of the purchase money, penalty, and interest, as his quantity of acres will bear to the whole quanity taxed; and such payment shall operate as a redemption of a proportionate part, according to the amount paid, of the land sold.

Same.

SECT. 109. In every case of a partial redemption, pursuant to either of the last five sections, the quantity sold shall be re-

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duced in proportion to the amount paid on such partial redemption, and the county auditor shall convey accordingly. ARTICLE 7.

Lands of one person sold for taxes of him and another.

SECT. 110. Whenever the lands of any one person shall be sold for taxes assessed conjointly on the lands of such person and the lands of another person, and such other person shall not pay his due proportion, the person whose lands shall be sold may redeem the same, on paying the amount due to the purchaser; and he shall be entitled to recover from such other person whose lands were assessed with his, a just proportion of the redemption money so paid, with lawful interest from the time of such redemption; but no suit shall be brought for the recovery of such proportion until after the expiration of the time allowed for redemption.

If not redeemed, such owner may recover from the other person.

SECT. 111. If such owner shall not redeem the land sold, and the same shall be conveyed by the county auditor, such owner may recover from such other person the same proportion of the value of the land sold and conveyed, that he ought to have paid of the tax, interest, and charges, for which the land shall have been sold.

Judgm'ts therefor to have priority.

SECT. 112. Every judgment obtained under either of the two last sections, shall have priority as against the lands of the defendant therein, on which the tax was assessed, and for which such proportionate part ought to have been paid, to all mortgages executed, and all judgments recovered since, the time when such taxes were assessed.

Conveyance, when to be made, and how

SECT. 113. If no person shall redeem such land within two years, at the expiration thereof, and on production of the certificate of purchase, and in case the certificate covers only a part of a tract or lot of land, then accompanied with a survey of such part, made by the county surveyor, the auditor of the county in which the sale of such lands took place, shall execute to the purchaser, his heirs, or assigns, in the name of the state, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple, subject, however, to all the claims which the state may have thereon for taxes, or other liens or incumbrances.

Same.

SECT. 114. When two or more parcels, tracts, or lots of land, are sold for non-payment of taxes to the same purchaser or purchasers, or the same person or persons shall in any wise become the owners of the certificates therefor, all of such parcels shall be included in one deed.

Same.

SECT. 115. Such conveyances shall be executed by the county auditor, under his hand and seal, and the execution thereof shall be witnessed by the county treasurer, and shall be prima facie evidence that the sale was regular, and of a good title in such grantee, his heirs, and assigns, according to the provisions of this chapter.

Evidence.

If auditor discover that sale is invalid, not to convey, but refund money, &c.

SECT. 116. Whenever the county auditor shall discover, prior to the conveyance of any lands sold for taxes, that the sale was, for any cause whatever, invalid, he shall not convey such lands; but the purchase money and interest thereon shall be

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refunded out of the county treasury to the purchaser, his representatives, or assigns, on the order of the county auditor; and such land, if originally liable to taxation, and being still delinquent, shall again be placed on the delinquent list, and the amount so refunded with interest, be collected as in other cases.

Sale invalid if land not taxable, or taxes paid.

SECT. 117. No sale or conveyance of land for taxes shall be valid, if at the time of being listed such land shall not have been liable to taxation; or if liable, the taxes thereon shall have been paid before sale, and in all such cases, the money paid by the purchaser at such void sale, shall be refunded out of the county treasury, on the order of the county auditor.

If invalid for any other cause, lien of state to be transferred.

SECT. 118. If any conveyance for taxes shall prove to be invalid, and ineffectual to convey title for any other cause than those enumerated in the preceding section, the lien which the state has on such lands shall be transferred to and vested in the grantee, his heirs, and assigns, who shall be entitled to recover from the owner of such land the amount of taxes, interest, and penalty, legally due thereon at the time of sale, with interest, together with the amount of all subsequent taxes paid, with interest, and such lands shall be bound for the payment thereof.

Not invalid if assessed in wrong name.

SECT. 119. The sale of lands for taxes shall not be invalid on account of such lands having been listed or charged on the duplicate in any other name than that of the rightful owner.

Auditor to make deeds for lands sold under former laws

SECT. 120. The county auditors are hereby authorized to make deeds for lands in their respective counties, sold for taxes under any former law, where the same remains yet to be done; and the deeds so made shall be good and valid, as if made by the person authorized under any such former law to make them.

Certificates to be cancelled.

SECT. 121. When conveyances are delivered for lands sold for taxes, the certificates therefor shall be cancelled and filed away by the auditor; and in case of the loss of any certificate, on being fully satisfied thereof by due proof, the auditor may execute and deliver the proper conveyance, and file such proof in his office.

Lost certificate may be replaced.

Record of lands conveyed, how kept.

SECT. 122. A register shall be kept by the county auditor, in his office, containing a brief description of the lands by him conveyed on sales for taxes, the name of the person charged therewith, the date of sale, the name of the purchaser, the amount for which sold, the name of the grantee in the deed, and the date of its execution.

Redemption of land to be entered on record.

SECT. 123. When lands sold for taxes, or any portions thereof, shall be redeemed, the county auditor shall insert a memorandum of such redemption, the quantity or description of the portion redeemed, if not the whole, the date thereof, and by whom made, on his record of sales of land for delinquent taxes, and sign the same officially, and shall likewise give a certificate thereof to the person redeeming.

Lands not sold to be forfeited, and how disposed of.

SECT. 124. In case sales of any land for taxes shall not be perfected for want of bidders, the same shall be considered as forfeited to the state, to be disposed of as the general assembly shall hereafter by law direct; and until so disposed of or re-

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deemed, shall be continued on the duplicate, charged with all arrearages for which it was so forfeited, and interest; and shall be annually assessed and charged with all accruing taxes, penalties, and interest, as other lands. ARTICLE 8.

SECT. 125. Such lands shall be annually offered for sale with, and on the same terms as, other delinquent lands; and until sold for the amount of all arrearages, may be redeemed on payment of the same into the county treasury, by the owner or owners thereof; and such payments shall be proceeded with, and certified as is provided in the eighty-fourth and eighty-eighth sections of this chapter. To be annually offered for sale, and may be redeemed.

SECT. 126. The records made by the county auditors respecting delinquent lands, the manner of advertisement of the sales thereof, the sales made of the same, and the conveyances therefor executed, and all copies of such records, duly certified to be such by the proper county auditor, under his seal of office, shall be received as prima facie evidence of the facts contained therein. Records of sales, &c., to be prima facie evidence.

ARTICLE VIII.

Regulations concerning the assessment of taxes on incorporated companies, (except the state bank,) and of the collection thereof.

SECTION
127. All corporations deriving income, taxable.
128. Officers to deliver statements under oath, to whom, when and contents.
129. Forfeiture of $250 for omitting to furnish such statements.
130. Prosecution therefor: terms on which suit may be discontinued.
131. Assessors to enter such companies and their property on their rolls.
132. Value of stock, how ascertained.
133. Abstracts to be sent by county auditor to state auditor.

SECTION
134. County treasurer to demand payment from president—if not paid, how collected.
135. To be paid out of the funds of the company, and charged to stock.
136. If not collected, to be returned to auditor.
137. Same penalties as in other cases.
138. State auditor may file bill in chancery for sequestration, &c.
139. Power of the court therein;
140. Or suit may be brought to recover taxes, &c.

SECT. 127. All moneyed or stock corporations, (except the state bank of Indiana,) deriving an income or profit from their capital, or otherwise, shall be liable to taxation, in the manner hereinafter prescribed. Companies liable to taxation.

SECT. 128. The president, cashier, secretary, treasurer, or other proper officer of every such incorporated company, shall, on or before the twenty-fifth day of May in each year, make and deliver to the assessor of the county in which such company is liable to be taxed, according to the provisions of the fifteenth section of this chapter, a written statement specifying, Officers to deliver statements to assessor.

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1. The real estate, if any, owned by such company, the townships and counties in which it is situate, and the sums actually paid therefor.

2. The capital stock actually paid in, and secured to be paid in.

3. The amount of capital stock held by the state, and by any incorporated literary or charitable institution.

4. The town or place in which the principal office or place of transacting the financial business of such company is situated; or, if there be no such principal office, the town or place in which its operations are carried on, or in which it is liable to be taxed under the provisions of this chapter; and such statement shall be certified under the oath of such president or other officer, to be, in all respects, just and true.

Penalty on companies failing to furnish statement.

SECT. 129. If the statement above required shall not be furnished within thirty days after the time above provided, the company neglecting to furnish such statement shall forfeit to the state the sum of two hundred and fifty dollars; and it shall be the duty of the assessor to furnish the county auditor with an account of all companies that shall neglect to render such list, that he may prosecute for the penalty hereby imposed.

Suit for penalty and when to be discontinued.

SECT. 130. Such forfeiture may be recovered by action of debt; but if any company so prosecuted shall pay the costs of prosecution, and furnish the statement required, the county auditor, if he shall be satisfied that the omission was not wilful, may, in his discretion, discontinue such suit.

Companies, how listed and assessed.

SECT. 131. The assessors of the several counties shall enter all companies from which such statements shall have been received, and the property of such companies, and the property of all other incorporated companies liable to taxation in their respective counties on their appraisement rolls in the same manner, as near as may be, as required in other cases, showing the name of each company, the amount of its capital stock paid in, and secured to be paid in, the amount paid by such company for real estate then belonging to such company, wherever the same may be situated, and the amount of its stock, if any, belonging to the state, and to incorporated literary and charitable institutions; also, a proper description of all the real estate of such company taxable in their respective counties, with the value thereof.

Value of stock.

SECT. 132. The cash value of the stock of all such companies shall be ascertained by the assessor, by the sales of stock, or in any other manner, deducting therefrom the sums paid for real estate then owned by each company, and the amount of stock, if any, belonging to the state, and to incorporated literary and charitable institutions, which value thus ascertained, together with the value of the real estate of such companies, shall constitute the amount on which the tax of such companies shall be assessed.

Abstract to be sent to state

SECT. 133. The county auditor shall transmit to the auditor of state, embraced in the abstracts of the assessment roll, a

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statement showing the names of the incorporated companies liable to taxation in such county, the amount of the capital stock paid in, and secured to be paid in, liable to taxation by each; the amount of real and personal estate taxable to each; and the amount of taxes assessed on each. auditor, and its contents.

SECT. 134. The county treasurer shall obtain payment of all taxes assessed on incorporated companies from the president or other proper officer of such companies, in the same manner as in other cases, and if not paid, shall proceed in the collection and payment thereof, and penalties thereon, in the same manner as in other cases, and shall be liable to the same penalties for the non-payment of moneys collected by him. Duty of county treasurer. Penalty for non-payment.

SECT. 135. Such taxes shall be paid out of the funds of the company, and shall be rateably deducted from the dividends of those stockholders whose stock was taxed, or shall be charged upon such stock, if no dividends be afterwards declared. Taxes, how paid.

SECT. 136. If the county treasurer shall not be able to collect any tax assessed upon an incorporated company, he shall return the same to the county auditor, and be allowed therefor as in other cases; and the county auditor shall certify the same with the delinquent taxes to the auditor of state. Proceedings if taxes cannot be collected.

SECT. 137. The same penalties and interest shall he charged on the delinqent taxes due from incorporated companies as in other cases. Penalties.

SECT. 138. If any such company shall not have real estate out of which to make such delinqent taxes, the auditor of state may, if he deem it expedient, cause to be filed in the proper court of chancery, a bill against such company, for the discovery and sequestration of its property. When bill in chancery may be filed.

SECT. 139. The court, on the filing of such bill, or on the coming in of the answer thereto, shall order such part of the property of such company to be sequestered as they shall deem necessary for the purpose of satisfying the taxes, penalties, and interest in arrear, with the costs of prosecution; and they may also, at their discretion, enjoin such company and the officers thereof, from any further proceedings under their act of incorporation, and may order and direct such other proceedings as they shall deem necessary to compel the payment of such tax, penalties, interest, and costs. Powers of court therein.

SECT. 140. Or such tax, penalties, and interest, may be recovered, with costs, from such delinquent company, by action in the name of the state, on the relation of the auditor of public accounts, in the circuit court of the proper county. Suit may be brought for taxes.

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ARTICLE IX.

Regulations concerning the assessment and collection of taxes on individual stock in the state bank of Indiana.

SECTION
141. What stock shall be taxable.
142. Statement of stock to be furnished to state auditor when, and its contents.
143. On failure, to forfeit $200.
144. State auditor shall assess taxes.
145. In ten days, give notice thereof to cashier of state bank.
146. If no statement is furnished, stock how estimated.
147. Taxes to be paid second Monday in February.
148. On failure to pay, to forfeit $500.
149. To be paid out of funds of bank and charged to dividends on stock.
150. Same penalties and interest as in other cases.
151. Remedies for recovery thereof.
152. State auditor shall prosecute, and pay proceeds to county seminary.

What stock taxable.

SECT. 141. The capital stock held and fully paid out by individuals, in the state bank of Indiana, shall be liable to taxation in the manner hereinafter prescribed.

Statement to be made and certified by officers of the bank.

SECT. 142. By the second Monday in November, annually, the board of directors of each branch of said bank, shall cause to be transmitted to the auditor of state, and filed in his office, a correct statement of the amount of stock owned and paid out in their respective branches, other than that held by the state; such statement to be certified to be correct by the president and cashier of the respective branches.

To forfeit $200 on failure.

SECT. 143. Any branch failing to forward and file in the auditor's office the statement aforesaid, at the time required, shall forfeit and pay to the state the sum of two hundred dollars.

Assessment of taxes.

SECT. 144. Immediately on receiving such statement, the auditor of state shall proceed to assess upon each branch the amount of taxes due therefrom, according to the laws upon the subject then in force.

Notice thereof to be given.

SECT. 145. He shall, within ten days after receiving such statement, notify each branch of the amount so assessed, which notice shall be given by filing the same in the office of the cashier of the state bank.

Branch failing to furnish a statement, estimate, how made.

SECT. 146. Should any branch fail to transmit the statement above required, the said auditor shall proceed to estimate, from the best sources in his power, the amount of taxable stock in any such branch, and shall assess it accordingly, and give the notice required in the preceding section.

Taxes, when to be paid.

SECT. 147. The board of directors of each branch shall cause to be paid to the treasurer of state, the amount of taxes so assessed, by the second Monday in February, and file the treasurer's receipt therefor with the auditor of state.

Penalty.

SECT. 148. Any branch failing to pay as aforesaid, shall forfeit and pay to the state the sum of five hundred dollars.

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SECT. 149. Such taxes shall be paid out of the funds of the respective branch banks, and shall be rateably deducted from the dividends of the stockholders whose stock was taxed, or shall be charged upon such stock, if no dividends be afterwards declared. Taxes, how paid.

SECT. 150. The same penalties and interest shall be charged on the delinquent taxes due from the branches of the state bank as in other cases. Penalties and interest to be charged.

SECT. 151. For the recovery of such taxes, penalties, and interest, the same remedies may be had against any delinquent branch of the state bank, as are provided in sections one hundred thirty-nine, one hundred forty, and one hundred forty-one of this chapter. Remedies therefor.

SECT. 152. The auditor of state shall cause prosecutions to be instituted for the recovery of the penalties aforesaid, and the same when received may be drawn from the state treasury by warrant from the auditor, on the order of the board of trustees of the proper county seminary. Aud. of state to prosecute.

ARTICLE X.

Miscellaneous provisions of a general nature.

SECTION

153. County treasurers may appoint deputies, and take security.
154. If tax paid by treasurer, he may subsequently collect it.
155. Penalty on any officer failing to perform his duty.
156. State auditor to furnish forms.
157. Also, copies of this chapter.
158. Sales for taxes for opening, &c. roads, how conducted.
159. Certificates and deeds to be recorded, and their effect.

SECTION

160. Losses to state by default of assessor, &c. to be made good by the county.
161. Occupant paying taxes may sue or retain.
162. Excess on sale of property for taxes, how disposed of.
163. Fees of county auditor for transfers and deed.
164. Expense of advertising to be paid by county.

SECT. 153. The county treasurer may appoint one or more deputies for the collection of taxes, and may take such bond and security from them as he shall deem necessary; but in all cases he shall be held liable for the proceedings and misconduct of his deputies. Deputy treasurers may be appointed. Principal liable for their acts.

SECT. 154. If any county treasurer, on making settlement with the county auditor, shall stand charged with any tax that remains unpaid, and shall not receive a credit therefor in such settlement, such treasurer may collect such tax for his own use, at any time within one year after such settlement, either by distress and sale, as hereinbefore provided, or by an action of debt in his own name, before any justice of the peace, or court having jurisdiction. When treasur'r may collect taxes on his own account.

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Penalty on officer failing to perform duty

SECT. 155. If any officer concerned in the execution of any of the provisions of this chapter shall wilfully neglect or refuse to perform the duties assigned to him, such officer shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by fine or imprisonment, or both, in the discretion of the court.

Forms and instructions to be furnished by state auditor.

SECT. 156. The auditor of state shall, from time to time, furnish the several county assessors, auditors, and treasurers, with all such forms and instructions as he may wish them to pursue in the performance of the duties required by this chapter.

Copies of this chapter to be furnished.

SECT. 157. The auditor of state shall, from time to time, whenever he shall find it necessary, cause to be printed, at the expense of this state, a sufficient number of copies of this chapter to furnish one copy to each county assessor, treasurer, auditor, and commissioner, within this state, and shall transmit to each county auditor a sufficient number for his county. Every county auditor receiving such copies shall immediately distribute the same to the persons entitled thereto.

Sales for road taxes, how made.

SECT. 158. All sales of lands charged with taxes in arrear for opening and improving roads within this state, shall be conducted in the manner hereinbefore prescribed; and the owners of the lands sold shall be allowed to redeem within the same time, and on the same conditions.

Conveyances and certificates how recorded, and their effect.

SECT. 159. Every certificate or conveyance executed by the auditor of any county, in pursuance of the provisions of this chapter, may be recorded in the same manner, and with the like effect, as a deed regularly acknowledged or proved before any officer authorized by law to take the proof and acknowledgment of deeds.

Losses to the state to be charged to the county.

SECT. 160. All losses to the state which may be sustained by the default of the assessor, treasurer, or auditor of any county, in the discharge of the duties imposed in this chapter, shall be chargeable on such county, and the board of county commissioners shall add such losses to the next year's taxes of such county, and cause the same to be paid into the state treasury.

Occupant paying taxes may sue or retain.

SECT. 161. When the taxes on any real estate shall have been collected of any occupant or tenant, and any other person, by agreement or otherwise, ought to pay such tax, or any part thereof, such occupant or tenant shall be entitled to recover by action, the amount which such person ought to have paid, or to retain the same from any rent due or accruing from him to such person, for the land so taxed.

Excess on a sale for taxes, how disposed of.

SECT. 162. If the real or personal property of any person shall be sold for taxes, and shall produce more than the sum chargeable thereon, the residue shall be paid to the person entitled by law to the same; and if any doubt or dispute shall arise as to the person entitled thereto, the same shall be paid into the county treasury, to remain until the rights of the parties shall be determined by due course of law.

Fees of county auditor.

SECT. 163. For every entry and transfer of land for taxation, the county auditor shall be paid by the person requesting such transfer, twelve and one-half cents; and for making a deed for

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any land sold for taxes, one dollar, to be paid by the person receiving such deed. ARTICLE 11.

SECT. 164. The expense of advertising delinquent lands in public newspapers shall be paid out of the county treasury, and the amount charged to the respective tracts advertised accordingly. Cost of advertising delinqu't lands, how paid.

ARTICLE XI.

Of certain specific taxes for county purposes.

SECTION
165. 1. Ferry licenses. 2. Venders of spirituous liquors. 3. Merchants' license. 4. Pedlars. 5. Caravans, shows, &c. 6. Brokers. 7. Clocks.
166. Term "merchant" defined.
167. Every vender of clocks deemed a principal, and to procure license.
168. License only authorizes one person to sell clocks.
169. Hiring, &c., when deemed a sale of clocks.
170. Term "brokers" defined.
171. When county commissioners to determine price of license.
172. When county treasurer.
173. Statement to be made by the applicant.
174. Receipt for tax to be filed with county auditor.
175. Duration of the license granted in vacation.
176. Damages for failing to procure license, four times its amount.
177. To be for the use of common schools.
178. County auditor and treasurer to prosecute, if license is not procured.
179. County auditor and treasurer may be witnesses.
180. Towns, &c. may assess tax on shows, &c.

SECT. 165. There shall be assessed and paid into the county treasury, for county expenditures, the following taxes: County taxes:

1. For each license to keep a ferry, not less than three nor more than fifty dollars. On ferries.

2. For each license to vend or retail spirituous liquors, not less than ten nor more than two hundred dollars. On venders of spirituous liquors.

3. For each merchant's license to vend foreign merchandise, or foreign and domestic groceries, according to the capital employed in such business at the time, as follows: 1. Five dollars for any amount not exceeding one thousand dollars; 2. Seven dollars and fifty cents for any amount over one thousand dollars and not exceeding two thousand dollars; 3. Ten dollars for any amount over two thousand and not exceeding three thousand dollars; 4. Twelve dollars and fifty cents for any amount over three thousand and not exceeding four thousand dollars; 5. Fifteen dollars for any amount over four thousand and not exceeding five thousand dollars; 6. Seventeen dollars and fifty cents for any amount over five thousand and not exceeding six thousand dollars; 7. Twenty dollars for any amount over six thousand dollars. On venders of foreign merchandise.

4. For each license to travelling merchants and pedlars, the same as other merchants, in proportion to time, and amount of On pedlars.

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capital employed, to be paid in each county where they shall vend or offer for sale any foreign merchandise, or foreign and domestic groceries, except coffee, tea, and sugar; the sum charged in each county in no case to be less than five dollars.

On shows, &c.

5. For each caravan, menagerie, or other collection of animals, and for each show of any figures, and for each circus, or theatre, rope or wire-dancing, or slight of hand, exhibited for reward, not less than five nor more than fifty dollars for each day's exhibition or performance.

On brokers.

6. For each license to carry on and exercise the business of a stock or exchange broker, in buying or selling stocks, bank notes, gold or silver money, or dealing in promissory notes, or bills of exchange, one hundred dollars for a period of one year, and this section is intended to include all insurance offices or companies, and savings institutions, dealing in the business aforesaid.

On venders of clocks.

7. For each license to vend wooden, brass, or composition clocks, not less than fifty nor more than one hundred dollars.

Term "merchant" defined.

SECT. 166. The term "merchant," as used in this article, shall be construed to include every person trading or dealing in foreign goods, wares, merchandise, jewelry, drugs, or medicines, or in foreign and domestic groceries, except coffee, tea, and sugar.

Every vender of clocks deemed a principal.

SECT. 167. Every person vending clocks for another shall be deemed a principal, and required to procure a license accordingly.

License to vend clocks restricted.

SECT. 168. No license to vend clocks shall authorize more than one person to sell, and that only within one county, and for not more than one year; and the person so authorized shall be the one in whose name such license shall have been procured.

Hiring, &c. of clocks.

SECT. 169. The hiring, leasing, or bailment of any clock by any person dealing therein, shall be deemed a sale and treated accordingly.

Brokers defined.

SECT. 170. The sixth clause of the one hundred and sixty-fifth section of this chapter shall not be construed to mean occasional acts of dealing in the things therein mentioned, which may occur in the course of trade; but shall be limited in its operations to those who notoriously carry on, or exercise for gain, the business of dealing in promissory notes, or bills of exchange, or in buying and selling stocks, bank notes, gold or silver money.

Price of license, how determined.

SECT. 171. The board of county commissioners shall determine the sum to be charged for any license whenever in this article the same is left indefinite.

Same.

SECT. 172. If such board shall not be in session when application for license is made, the county treasurer shall determine the sum to be charged as aforesaid.

Statement to be made by applicant.

SECT. 173. The person applying for license shall state on oath, if to vend merchandise, the amount of capital on which such tax is to be assessed, and the time he designs to continue

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in such business within such county. If to vend spirituous liquors, or clocks, in addition to the foregoing, he shall state such other facts and circumstances regarding his business and its profits, as the county board or treasurer may require.

Tax paid, and receipt where filed.

SECT. 174. The tax for the licenses aforesaid shall be paid to the county treasurer, and his receipt filed with the county auditor, who shall thereupon issue a license in proper form.

Duration of license granted in vacation.

SECT. 175. No license to vend or transact the business of a broker, granted in vacation, on application to the county treasurer, shall extend beyond the next term of the board of county commissioners, and the tax thereon shall be assessed in proportion accordingly.

Penalty.

SECT. 176. Every person who shall transact or carry on any business above specified, without first procuring the license required, for each and every such offence shall be liable to an action, in the name of the proper county treasurer, for the amount of such tax, before any justice of the peace; and if judgment shall be rendered for the plaintiff, damages shall likewise be awarded to four times the amount of such tax.

How disposed of.

SECT. 177. Such damages shall be for the use of common schools in the proper county.

Auditor and treasurer to see that license is obtained, or to sue.

SECT. 178. It shall be the duty of the county auditor and treasurer to see that licenses are procured and paid for by those who should obtain the same, and on neglect or refusal by any such person, to cause suit as aforesaid to be instituted immediately after such person shall commence the business or exhibition for which such license is required.

Auditor and treasurer witnesses.

SECT. 179. Such auditor and treasurer shall be competent witnesses in any such suit.

Towns may tax shows, &c.

SECT. 180. Nothing herein contained shall prevent the taxing of any exhibition mentioned in the fifth clause of the one hundred and sixty-fifth section of this chapter, by the proper authority of any incorporated town or city.

CHAPTER 13.

OF THE FUNDS, REVENUE, EXPENDITURE, AND PROPERTY OF THE STATE, AND THE MANAGEMENT THEREOF.

ARTICLE 1. Of the general fund, and the expenditure chargeable thereon.
ARTICLE 2. Of the internal improvement fund, and the administration thereof.
ARTICLE 3. Of the university fund.
ARTICLE 4. Of the saline fund.
ARTICLE 5. Of the bank tax fund.
ARTICLE 6. Of the county seminary fund.
ARTICLE 7. Of the surplus revenue fund.
ARTICLE 8. Of the congressional township fund.
ARTICLE 9. Of the three per cent. fund.

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ARTICLE 10. Of the common school fund created by bank profits.
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ARTICLE 12. Of the lands belonging to the saline fund.
ARTICLE 13. Of the lands belonging to common schools.
ARTICLE 14. Of the Wabash and Erie canal lands, and the selection, classing, rating, and sale thereof.
ARTICLE 15. Of the regulations concerning the protection of the public lands, and of land mortgaged to the state, and the payment of charges thereon.
ARTICLE 16. Of the canals, railroads, and turnpikes belonging to the state in whole or in part.
ARTICLE 17. Of the preservation of the canals of this state, of the collection of tolls, and of the transportation thereon.

ARTICLE I.

Of the general fund, and the expenditures chargeable thereon.

SECTION
1. General fund, of what constituted.
2. Sales of lots in Indianapolis.
3. Penalties and forfeitures not otherwise appropriated.
4. Money paid for copies of laws.
5. Charges on general fund.
6. Payments to be made quarterly.
7. Pay of lieutenant governor.

SECTION
8. Office expenses of state officers.
9. Office expenses of clerk of supreme court.
10. Contingent fund.
11. 1. Expenses of general assembly. 2. Conveyance of convicts. 3. Transportation of arms. 4. Public printing. 5. Other charges.

General fund shall consist of what.

SECTION 1. The moneys, debts, and other property heretofore belonging to the treasury proper, together with the increase and revenue thereof, and the additions which may be made thereto, shall be known and denominated the general fund.

Sales of lots in Indianapolis part of general fund.

SECT. 2. All moneys due the state for sales of lots in the town of Indianapolis, shall be paid into the state treasury and constitute a part of the general fund.

Penalties and forfeitures not otherwise appropriated, part of general fund.

SECT. 3. All moneys recovered by any public officer, for penalties or forfeitures, and not specially appropriated to any other fund, shall also be deemed a part of the general fund.

Payments for copies of laws, part of general fund.

SECT. 4. All moneys paid by any person for copies of the laws published by authority of the state, shall be deemed part of the general fund.

Charges on general fund.

SECT. 5. There shall be allowed to the several officers of government, and persons hereinafter mentioned, their annual salaries, as established by law, to be paid quarterly out of any moneys in the treasury belonging to the general fund, and not otherwise specially appropriated by law, that is to say:

Salaries of officers.

1. The governor and his private secretary.
2. The secretary of state.
3. The auditor of public accounts.
4. The treasurer of state.
5. The quartermaster general.
6. The adjutant general.
7. The judges of the supreme court.
8. The sheriff of the supreme court.

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9. The president judges of the circuit courts.
10. The prosecuting attorneys.
11. The judges of the probate courts.
12. The state librarian and keeper of the state house.

Payable quarterly.

SECT. 6. The salaries above specified shall be payable in quarterly payments, at the treasury, on the last days of January, April, July, and October, in every year.

Pay of lieutenant governor.

SECT. 7. There shall be allowed and paid to the lieutenant governor the same compensation as is allowed to the speaker of the house of representatives, for every day's attendance as president of the senate, and mileage for travelling to, and going from the seat of government, to be computed according to the distance on the road most usually travelled.

Furniture and expenses for offices of state.

SECT. 8. The expenses of the necessary furniture, stationary, firewood, book-binding, printing, and postage of the offices of the governor, secretary of state, auditor of public accounts, treasurer of state, quartermaster general, and adjutant general, shall be paid out of the general fund.

—for office of clerk of supreme court.

SECT. 9. The expenses of the necessary furniture, firewood, blanks, books, and stationary of the office of the clerk of the supreme court, shall be paid out of the general fund, on warrant granted on the order of the supreme court.

Contingent fund.

SECT. 10. There shall annually be paid out of the general fund, to the order of the governor, a sum not exceeding one thousand dollars, to defray the contingent expenses of administering the government of this state.

Additional charges on general fund.

SECT. 11. In addition to the salaries and contingent expenses above mentioned, the following expenditures shall be chargeable to, and from time to time paid out of, the general fund:

Expenses of general assembly.

1. The compensation of the members and officers of the general assembly, including the contingent expenses of both houses.

Sheriff for taking convicts.

2. The compensation of sheriffs for conveying convicts to the state prison.

Transportation of arms.

3. The expenses of transportation of public arms, repair, and preservation of the same.

Public printing.

4. The expenses of all printing done for the state.

Other charges.

5. All moneys directed by law to be paid out of the treasury, and not specially charged to any other fund.

ARTICLE II.

Of the internal improvement fund, and the administration thereof.

SECTION
12. Shall consist of, 1. Lands granted. 2. Debts for lands sold. 3. Tolls 4. Certain penalties and damages.

SECTION 12—*Continued.*
5. Sales of state bonds. 6. Dividends from stock. 7. Treasury notes and scrip.

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SECTION
13. Funds of Wabash and Erie canal east of Tippecanoe river to be kept distinct.
14. Same as to funds of canal west of Tippecanoe.
15. Expenditures of same canals to be kept distinct.
16. Internal improvement fund, how superintended.
17. State agent, his duties.
18. Funds to be paid into state treasury: 1. Loans and debts for lands sold, when. 2. Sales of lands every sixty days. 3. Tolls the same. 4. Water rents the same. 5. Dividends, when.
19. Expenditures, how made on public works.
20. Expenditures of public debt and state agent.
21. Advances, how made; when and how accounted for.
22. Same.
23. Manner in which the excess of dividends on the state stock shall be applied to the payment of the surplus revenue bonds held by the bank.
24. Nature of the accounts to be kept by auditor and treasurer, and reports to be made.
25. Treasurer to make payments on Wabash and Erie canal, west of Tippecanoe.

Internal improvement fund to consist of—

SECT. 12. The internal improvement fund shall consist of the following:

Lands.

1. Lands granted for the construction of canals, railroads, or turnpikes, by the United States, by the state, by companies, or by individuals, and remaining unsold.

Debts for lands sold.

2. Debts due for such portions of said lands as have heretofore been sold.

Tolls.

3. The tolls imposed on and collected from such navigable communications belonging to the state as now are, or may hereafter be made and completed.

Penalties and damages.

4. All moneys recovered in suits for penalties and damages instituted under the laws for the regulation and preservation of the public works.

Proceeds of state bonds.

5. The proceeds of all state bonds heretofore sold and remaining unpaid, for internal improvement purposes, and the rents and avails of all property, real or personal, received in payment or in security for state bonds sold for internal improvement purposes.

Dividends from bank stock.

6. All dividends arising from bank or other stock appropriated for internal improvement purposes.

Treasury notes or land scrip.

7. All treasury notes or land scrip issued by authority of the state for internal improvement purposes.

Funds of Wabash and Erie canal east of Tippecanoe to be kept distinct.

SECT. 13. All such lands as shall have been granted by the United States, or otherwise, for the construction of the Wabash and Erie canal east of Tippecanoe river, remaining unsold, and all debts and interest due, or to become due, for lands sold, granted for the above purpose, and all the tolls and water rents arising from said canal east of Lafayette, inclusive, and all scrip issued and predicated upon such lands or tolls, shall be kept as a separate and distinct fund, and be exclusively applied to the construction and repair of said canal, and the payment of the debt and interest due by the state on account of the same.

Funds of Wabash and Erie canal west of

SECT. 14. All such lands as shall have been granted by the United States, or otherwise, for the construction of the Wabash

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and Erie canal west of Tippecanoe river, and all debts and interest due or to become due for lands sold, granted for the above purpose; and all tolls and water rents arising from said canal west of Lafayette, and all scrip issued and predicated upon such land or tolls, shall be kept as a separate and distinct fund, and exclusively applied to the construction and repair of said canal. ARTICLE 2. Tippecanoe to be kept separate.

SECT. 15. In like manner as the receipts are kept separate, so shall the expenditures upon the canal, above and below Lafayette, be kept separate and distinct from each other. Expenditures on same to be kept distinct.

SECT. 16. The internal improvement fund shall continue to be superintended and managed by the state agent. Fund, how superintended.

SECT. 17. It shall be the duty of the state agent to manage, to the best advantage, all things belonging to that fund; to recommend, from time to time, to the general assembly, the adoption of such measures as may be thought proper for the security and improvement of that fund; and to report to the general assembly, at the opening of every session thereof, the state of the fund. Same.

SECT. 18. All moneys collected or received on account of, or belonging to the internal improvement fund, shall be paid into the state treasury or deposited in some safe bank, to the credit of the treasurer of state, by the persons or agents collecting or receiving the same, (and the treasurer shall be charged therewith in the books of the auditor,) as follows: Fund to be paid into state treasury, and how.

1. All moneys borrowed on the credit of the state, or procured by other means, for the prosecution of any of the public works; all moneys recovered for debts due the state for bonds heretofore sold for internal improvement purposes, or derived from lands, stocks, or other securities transferred or given for bonds so sold, shall, by the agent receiving, be forthwith paid over or deposited as aforesaid. Loans and debts for bonds sold.

2. All moneys arising from sales of canal lands, or interest thereon, shall be paid or deposited as aforesaid every sixty days. Sales of lands.

3. All moneys arising from tolls shall be paid or deposited, as aforesaid, every sixty days. Tolls.

4. All moneys arising from water rents shall be paid or deposited, as aforesaid, every six months. Water rents.

5. All dividends arising from bank stock appropriated for internal improvement purposes shall be carried to the credit of the treasurer of state on the books of the branches declaring the same; and immediately thereafter notice of the amount thereof shall be given to the auditor and treasurer of state by the cashier of the state bank.* Dividends.

SECT. 19. In making expenditures of said fund, the treasurer of state shall, from time to time, advance to the commissioner on the Wabash and Erie canal east of Lafayette, and to the agents on the Madison and Indianapolis railroad, and the Whitewater and Central canals, and the New Albany and Vincennes Expenditures, how made.

* This stock has since been surrendered, and the proceeds applied to the payment of the state bonds and treasury notes held by the bank. See acts 1843, page 53, chap. 48.

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road, such sums as may be deemed requisite for the repair and preservation of said works.*

Expenditures, how made.

SECT. 20. The treasurer shall also advance, from time to time, to the state agent, such sums of money as shall be necessary to pay the principal and interest on the public debt, and meet the incidental payments required in the performance of the duties of his office.

Advances to be made on requisitions of auditor.

SECT. 21. Such advances shall be made on requisitions drawn by the auditor of public accounts on the treasurer of state, which shall be numbered, and the amount thereof charged, by said auditor, to the commissioner or agent receiving the same, in a book to be kept for that purpose; and for the amount so charged, the commissioner or agent shall settle and account with the auditor as follows:

When and how settled for.

1. The said state agent semi-annually.

2. The said canal commissioners semi-annually.

3. The said treasurer every sixty days, closing the whole at the end of the official year.

Same.

SECT. 22. For the amount of satisfactory vouchers produced at such settlements, the auditor shall issue warrants with which shall be redeemed the requisitions before issued; and should any amount yet remain in any such agent's hands, he shall refund the same to the treasury, unless the same shall be required for a new expenditure, when a new requisition shall be obtained therefor.

Excess of dividends on bank stock, how to be applied.

SECT. 23. The excess of dividends on the state stock in the state bank, after paying the semi-annual interest on the state loan for banking purposes, and which excess was, by the fourth section of the act entitled "An act taxing individual stock in the several branches of the state bank of Indiana, and for other purposes," approved January 29th, 1842, appropriated to the payment of the debt due the bank by the state, for the advance made on account of the fourth instalment of the surplus revenue, shall continue to be so applied as follows:†

1. Such excess shall first be applied to the payment of the interest due on any bonds issued for payment of such advance on account of the fourth instalment; next, to the principal of any such bonds held by the branch in which such excess of dividend shall be.

2. Immediately after such dividend is declared, and such excess ascertained, the cashier of each branch to which the state is indebted for such bonds shall present to the auditor of state, to be cancelled, so many of the state bonds aforesaid, or dividend warrants thereon then due, as the excess of such dividend in such branch may amount to.

3. If the amount of dividend warrants so surrendered shall not equal the amount of such excess, and the residue shall not

* The Madison and Indianapolis railroad and the Whitewater canal have since been surrendered to companies, and are no longer a charge on the state.

† The debt intended by this section to be paid, has since been satisfied by a surrender of bank stock equal to the amount.

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be sufficient to discharge any one bond, the said cashier shall endorse the amount on some such bond, and give to the auditor a receipt for the same. ACTICLE 3.

4. Thereupon the auditor shall draw his warrant on the treasurer in favor of such cashier for the amount of such excess so applied, and the treasurer shall pay the same by a draft for such excess on the proper branch.

SECT. 24. Proper accounts shall be kept on the auditor's and treasurer's books with the several funds, the several works, and receiving and disbursing officers, showing the amount received from, and paid to, or expended upon each; and the proper reports of receipts and expenditures shall be made to the governor at the close of the fiscal year, and at such other times as the general assembly may direct. Accounts to be kept by auditor and treasurer. Reports.

SECT. 25. The expenditure upon the Wabash and Erie canal west of Lafayette shall be made, as heretofore, by the treasurer of state, or upon his responsibility, by such agents as he shall appoint. Treasurer to make expenditure on Wabash and Erie canal west of Tippecanoe.

ARTICLE III.

Of the university fund.

SECTION

26. Of what it consists.
27. Principal to be loaned and interest how applied.
28. Auditor to make loans on real estate.
29. Ascertain value of lands offered as security.—Title papers to be presented.
30. May appoint appraisers.
31. Their duty in making appraisement.
32. Perishable improvements excluded.
33. Quantity and description of land to be shown in certificate.
34. Appraisers' fees.
35. Loans restricted to $500.
36. Seven per cent. interest.
37. Time restricted to five years.
38 On failure to pay interest, principal becomes due.
39. Form of mortgage.
40. Form of note.
41. Loans restricted to one half of valuation.
42. Auditor may administer oaths.
43. Mortgage to have priority as to lien.
44. To be recorded, when
45. Clerk and recorder's certificate as to incumbrances.
46. Applicant to make oath as to title.
47. Auditor to draw on treasurer for loans made.
48. All money to be paid to treasurer.
49. When paid, mortgage how satisfied.

SECTION

50. Proceedings on failure to pay.
51. No stay of execution or appraisment of property.
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53. Sale of land to be made when—advertisement.
54. Sale, how conducted.
55. When to be purchased for the state.
56. To be sold for not less than the amount due.
57. Sale, when may be in parcels.
58. Treasurer to make statement of sales—record thereof—evidence.
59. No deed need be made to state.
60. Deed to purchaser on payment.
61. Deed to purchaser when sold on credit—mortgage to be taken—accounts, how kept.
62. Damages, how disposed of.
63. Accounts to be kept and reports to be made.
64. Accounts with borrowers and reports thereof.
65. Loans may be made to the state.
66. Interest not wanted for use, may be loaned.
67. Interest, how expended.
68. Warrants therefor, how obtained.
69. University lands, how managed.—Repeal of act on that subject.
70. Books, &c., to be transferred to auditor's office.

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University fund. Act of congress, 26th March, 1804; and of 19th April, 1816.

SECT. 26. The university fund shall, as heretofore, consist of the lands in Monroe and Gibson counties, granted for the use of the state university, and of the proceeds of the sales of the same, together with all other grants, gifts, and donations, made in money or otherwise, for the use of the university aforesaid.

Principal to be loaned.

SECT. 27. Of the amount of said university fund already paid into the state treasury, and which may hereafter be paid in, the principal shall, as hertofore, be loaned out, and the annual interest be applied in payment of the current expenses of the university, as provided in sections sixty-seven and sixty-eight of this chapter.

Interest, how applied.

Auditor to make loans.

SECT. 28. The auditor of state shall have power, and it is hereby made his duty, from time to time, to make loans of any and all the moneys authorized by the preceding section, to citizens of Indiana, on a pledge of real estate, to be secured by mortgage as hereinafter prescribed.

To ascertain value of lands offered.

SECT. 29. The auditor aforesaid shall duly inform himself of the value of all real estate offered in pledge as aforesaid, and shall be judge of the validity of the title thereof; and it is hereby made the duty of all persons applying for a loan to produce to said auditor, for his inspection, the title papers showing a clear and valid title in fee simple, without incumbrance, for the property so offered in pledge, and not derived through any executor or administrator's sale, or sale on execution.

Title papers to be produced.

May appoint appraisers.

SECT. 30. The auditor shall have power, whenever he may deem it necessary, to appoint commissioners in any county of this state to value and appraise any lands which may be offered in mortgage.

Duty of appraisers.

SECT. 31. Such commissioners first being duly sworn faithfully to discharge their duty as herein required, shall, on the application of the owner of any land proposed to be mortgaged, examine and appraise the same and give to the applicant a certificate signed by at least three of said commissioners, setting forth the value thereof in specie, at the common selling rate in their county at the time of such valuation.

Perishable improvements not to be considered.

SECT. 32. In making such appraisement, perishable improvements shall not be taken into consideration.

Certificate shall show the quantity of land.

SECT. 33. Such certificate shall also show the quantity of land, in acres; the quarter or half quarter section; the number of the section, township, and range, in which such land lies; or, where not surveyed by authority of the United States, such commissioners shall otherwise specify and designate the land in the best manner possible.

Fees.

SECT. 34. The commissioners appraising any such land, shall each be entitled to one dollar per day while so occupied, to be paid by the applicant.

Only $500 on one loan.

SECT. 35. No greater sum than five hundred dollars shall be loaned to any one person out of said fund.

Rate of interest seven per cent.

SECT. 36. The rate of interest required shall be seven per cent. per annum, payable annually in advance.

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ARTICLE 3.

Term of five years.

SECT. 37. No such loan shall be made for a longer term than five years.

On failure to pay interest, the principal shall become due.

SECT. 38. On failure to pay any instalment of interest when the same becomes due, the principal sum shall forthwith become due and payable; and the note and mortgage may be proceeded upon and collected.

Form of mortgage.

SECT. 39. The mortgage to be taken may be in the following form in substance, to-wit: I, A. B., of the county of —— in the state of Indiana, do assign over and transfer to the state of Indiana, all (here describe the land) which I declare to be mortgaged for the payment of ——— dollars, with interest at the rate of seven per cent. per annum, payable in advance, according to the conditions of the note hereunto annexed.

Form of note.

SECT. 40. The note accompanying the same may be in substance as follows, to-wit: I, A. B., promise to pay to the state of Indiana, on or before the —— ——, the sum of ———, with interest thereon at the rate of seven per cent. per annum, in advance, commencing on the ——— day of ———, 18——, and do agree that in case of failure to pay any instalment of said interest, the said principal sum shall become due and collectible, together with all arrears of interest; and on any such failure to pay principal or interest when due, five per cent. damages on the whole sum due shall be collected with costs, and the premises mortgaged may be forthwith sold by the auditor of public accounts for the payment of such principal sum, interest, damages, and costs.

Loan, one half the value of land.

Appraisement may be reduced.

SECT. 41. The sum loaned shall not exceed one half of the appraised value of the premises to be mortgaged, clear of all perishable improvements; and the anditor may reduce the amount to be loaned on any such valuation, when, for any cause, he may have reason to believe the same was not in proportion to the prices of similar property selling in the vicinity.

Auditor may administer oaths.

SECT. 42. The auditor shall have authority to administer all oaths required by this chapter.

Mortgage to have priority as to lien.

SECT. 43. The mortgages taken for loans as aforesaid shall be considered as of record from the date thereof, and shall have priority of all mortgages or conveyances not previously recorded, and of all other liens not previously incurred in the county where the land lies.

To be recorded when.

Expense.

SECT. 44. It shall be the duty of the auditor to have all such mortgages recorded with due diligence; the expense whereof shall be borne by the applicant for such loan, and may be retained out of the money borrowed.

Clerk and recorder's certificate.

SECT. 45. The person applying for a loan shall produce and file with the auditor, the certificate of the clerk and recorder of the county in which the land lies, showing that there is no conveyance of, nor incumbrance on, said land in either of their offices.

Applicant's oath.

SECT. 46. Such person shall also, before he receives the money to be loaned, make oath to the truth of an abstract of the title to his said land, and that there is no incumbrance or

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better claim in law or equity, that he knows of or believes, upon or to said land.

Auditor to draw on treasurer.

SECT. 47. On making any loan of said fund, the auditor shall draw his warrant on the treasurer in favor of the borrower; and the treasurer shall pay the same and charge it to the proper fund.

Loans refunded and interest to be paid to treasurer.

SECT. 48. All loans refunded and all interest shall be paid into the state treasury; and the treasurer's receipt shall be filed with the auditor of state, who shall give the payer a quietus for the amount thereof, and make the proper entries on his books.

When paid, mortgage how satisfied.

SECT. 49. Whenever the amount due on any mortgage shall be fully paid, and the treasurer's receipt filed therefor, the auditor shall endorse on the note and mortgage that the same have been fully satisfied, and surrender such note and mortgage to the person entitled thereto; and on the production of the same, with such endorsement thereon, the recorder of the proper county shall enter satisfaction upon the record thereof.

Proceedings on failure to pay

SECT. 50. When the interest or principal of any such loan shall become due and remain unpaid, the auditor shall proceed to collect the same by suit on the note, or by sale of the mortgaged premises, or both, as to him may seem most advisable: he may also, by action of ejectment, obtain possession of the mortgaged premises.

No stay of execution or appraisement

SECT. 51. In case of suit on such note and judgment thereon, no stay of execution or appraisement of property shall be allowed.

Penalty for waste, &c.

SECT. 52. Should any person in possession of any such mortgaged premises wilfully destroy or injure the same, whereby the security of the state shall be lessened, he shall be held guilty of a misdemeanor, and on conviction, be fined and imprisoned, at the discretion of the jury trying the same.

Sale of land authorized.

Advertisement

SECT. 53. On failure to pay any interest or principal when due on any such mortgage, the auditor shall advertise the mortgaged property for sale in one or more of the newspapers printed in this state, for sixty days; such sale to take place at the court house door in Indianapolis.

Sale, how made.

SECT. 54. At the time appointed for such sale, the auditor and treasurer of state shall attend; and the auditor shall make sale of so much of the mortgaged premises to the highest bidder, for cash, as will pay the amount due for principal, interest, damages, and costs of advertising and selling the same.

When to purchase for the state.

SECT. 55. In case no one will bid the full amount due as aforesaid, the auditor shall bid on the same on account of the proper fund; and as soon thereafter as may be, shall sell the same to the highest bidder for cash, or on a credit of five years, interest being payable annually in advance.

To be sold for amount due.

Overplus to whom paid.

SECT. 56. The sale authorized in the preceding section shall not be for less than the amount chargeable on such land; and if for more, the overplus shall be paid to the mortgager, his heirs, or assigns.

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When in parcels.

SECT. 57. Such sales may be in parcels, so that the whole amount required be realized thereby.

Treasurer to make statem't of sales.

SECT. 58. The treasurer shall attend and make a statement of such sales, which shall be signed by the auditor and treasurer, and after being recorded in the auditor's office, shall be filed in the treasurer's office, and such record, or a copy thereof, authenticated by the auditor's or treasurer's certificate, shall be received as evidence of the matters therein contained.

Record.

Evidence.

No deed to be made when land is purchased by the state.

SECT. 59. When any land is bid off by the state at such sale, no deed need be made therefor to the state; but the statement of such sale, and the record thereof made, as in the preceding section required, shall vest the title in the state for the use of the fund.

Deed to be made to purchaser on payment.

SECT. 60. In case of a sale of any such lands to any person for cash, on production of the treasurer's receipt for the purchase money, the auditor shall give to the purchaser a certificate, which shall entitle him to demand and receive a deed for said land, to be executed by the governor of this state, and recorded in the office of the secretary of state.

Also, when sold on credit, mortgage to be given.

SECT. 61. In like manner, when any tract bid off by the state is sold on a credit, on the execution and delivery of a note and mortgage for the proper amount, as in other cases required, the purchaser shall be entitled to a deed for the same, to be made as prescribed in the preceding section; and the transaction shall be entered and appear upon the auditor's and treasurer's books as a payment of the sum bid, and a re-loan of the same to the purchaser, and the proper receipts and warrants shall pass therefor.

Account how kept.

Damages, how disposed of.

SECT. 62. For the services of the auditor and treasurer in conducting such sales, they shall be entitled to receive the five per cent. damages chargeable on such sales.

Accounts to be kept, and reports to be made.

SECT. 63. The auditor and treasurer shall keep fair and regular entries of the sums received and paid out on account of said fund, and shall include the same in their annual reports.

Accounts with borrowers, and report thereof.

SECT. 64. In addition thereto the auditor shall keep fair and regular accounts with the borrowers of said fund, and shall report the names of borrowers with his annual report.

May loan to the state.

SECT. 65. Nothing in this chapter shall prevent the auditor from loaning any money belonging to said fund to the state of Indiana, on the faith and credit of the same.

When interest may be loaned.

SECT. 66. Should any interest remain on hand not wanted for the use of the university, the same may be loaned as other funds.

Interest to be expended.

SECT. 67. Out of the annual interest received, there shall be paid such sums as may be necessary for the support of the university, to the persons entitled thereto.

Warrants therefor, how obtained.

SECT. 68. Warrants therefor shall be drawn on the treasurer, by the auditor of state, on the requisition of the board of trustees of the Indiana University, signed by the president, and attested by the secretary thereof.

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PART 1.

University land, how managed.

SECT. 69. The care and disposition of the lands remaining unsold, or unpaid for, shall be vested in the present commissioners of the reserved townships in the counties in which such lands may lie, according to the provisions of the former laws on that subject; and the article passed on that subject at the present session is hereby repealed. *

Repeal.

Books, &c. to be transferred to auditor's office.

SECT. 70. The books, mortgages, and papers belonging to said fund, now in the treasurer's office, and which are necessary to the discharge of the auditor's duties as herein prescribed, shall be removed to said auditor's office.

ARTICLE IV.

Of the saline fund.

SECTION
71. Of what to consist.
SECTION
72. Fund to be loaned, and how.

Saline fund.

SECT. 71. The saline fund shall consist of the lands donated by the United States for saline purposes; all money arising from the sales and leases thereof, and interest accruing thereon.

To be loaned, and how.

SECT. 72. The money belonging to said fund already paid into the state treasury, and which shall hereafter be paid in, shall be loaned out to citizens of Indiana, under the same rules and regulations prescribed in sections twenty-eight to sixty-five, both inclusive, and section seventy, all in article third of this chapter, relating to the university fund; and the said sections are hereby adopted and made a part of this article.

ARTICLE V.

Of the bank tax fund.

SECTION
73. Of what to consist.
SECTION
74. To be loaned, and how.

Bank tax fund.

SECT. 73. The bank tax fund shall consist of the money set apart for that purpose in the fifteenth section of the act of the general assembly of the state of Indiana, entitled, "An act establishing a state bank," approved January 28th, 1834.

To be loaned, and how.

SECT. 74. The money already paid into the state treasury, or which may hereafter be paid in, belonging to said fund, shall be loaned out, under the same rules and regulations prescribed for the loaning of the university fund in sections twenty-eight to sixty-five, both inclusive, and section seventy of article third of this chapter; and the said sections are hereby adopted and made a part of this article.

* Article 11 of same chapter.

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ARTICLE VI.

Of the county seminary fund.

SECTION
75. Of what to consist.
76. Money on hand to be paid into county treasury.
77. Loans as refunded and interest to be paid into county treasury.
78. Receipts, where filed.
79. Auditor to charge treasurer and credit fund.
80. Report of fines to be made by clerks of circuit courts.
81. Report of fines to be made by justices of the peace.
82. Payments by clerks and justices, when to be made.
83. Reports to be recorded.
84. Suit on failure to pay, and fifteen per cent. damages.
85. One third of damages for use of attorney.
86 No stay or appraisement.
87. Funds, how loaned—rate of interest.
88. By county auditor, who and his sureties, responsible.
89. Compensation of auditor.
90. Auditor to draw on treasurer.
91. Loans and interest to be paid into county treasury—receipts where filed.

SECT. 75. The county seminary fund shall, as heretofore, consist of all moneys which shall be paid as an equivalent by persons exempt from militia duty except in time of war, to be equally divided among the counties; and of all fines assessed for any breach of the penal laws, to be applied to the county seminaries in the county wherein such fines shall be assessed. County seminary fund. Constitution, art. 9, sect. 3.

SECT. 76. All money due and belonging to any county seminary, in the hands of any commissioner, agent, clerk, sheriff, justice of the peace, constable, or other officer, shall be paid into the treasury of the proper county. To be paid into county treasury.

SECT. 77. All money out on loan, belonging to any county seminary, shall, as the same becomes due, together with all interest thereon as it becomes due, be paid to the proper county treasurer. All loans and interest to be paid into county treasury.

SECT. 78. The person so paying shall take the treasurer's receipt therefor, and file the same with the county auditor. Receipt, and where filed.

SECT. 79. The county auditor shall thereupon charge the treasurer, and credit the fund therewith, and give to such person a quietus for the amount so paid. Auditor's duty.

SECT. 80. At the close of each term of the circuit courts, the clerks thereof shall report in writing, verified by their oath, to the board of county commissioners in their respective counties, setting forth, Report of fines to be made by clerks of circuit court.

1. The names of all persons against whom fines have been assessed at such term, together with the amount and cause thereof.

2. The amount of fines received since their last report, together with the names of persons paying, the nature of the offence, and the term at which assessed.

SECT. 81. A like report shall be annually made by each justice of the peace of the fines assessed and collected by him within the preceding year, and shall be filed with the board of Reports to be made by justices.

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county commissioners at their first session after the first day of March.

Payments by clerks and justices, when to be made.

SECT. 82. At the time of making such reports, the said clerks and justices shall pay over to the county treasurer the sums collected as aforesaid.

Reports to be recorded.

SECT. 83. The reports so made shall be recorded on the minutes of said board, and the auditor shall see that proper measures are taken to enforce collection and payment of such fines.

Suit on failure to pay, and 15 per cent. damages.

SECT. 84. Should any person, having money in his hands due and belonging to said county seminary fund, fail to pay over the same as in this chapter directed, the auditor shall enforce payment of the same by suit, and in addition to the principal sum found due and legal interest thereon, the court shall render judgment for fifteen per cent. damages.

One third for prosecuting attorney.

SECT. 85. One third of the damages assessed as directed in the preceding section, shall be for the use of the attorney prosecuting such suit in behalf of the state.

No stay or appraisement allowed.

SECT. 86. No stay of execution or appraisement of property shall be allowed on such judgment.

Fund, how loaned.

SECT. 87. Until otherwise appropriated, the seminary funds paid into the county treasury, shall be loaned out on good security, at the rate of seven per cent. interest, payable annually in advance, for the term of one year or longer should the board of county commissioners so direct.

—by county auditor, who, and sureties, responsible.

SECT. 88. Such loans shall be made by the county auditor, who, and his sureties, shall be responsible for the same and all the interest thereon.

Compensation.

SECT. 89. On all sums so outstanding on loan, and upon which interest shall have been received for the current year, the auditor shall be allowed a compensation of one per cent. per annum.

Auditor to draw on the treasurer.

SECT. 90. On making any such loan, the auditor shall draw on the county treasurer for the amount thereof in favor of the borrower.

Payment to be made into county treasury.

SECT. 91. All interest accruing thereon, and principal when due, shall be paid into the county treasury, and the treasurer's receipt therefor filed with the county auditor, who shall give the payer a quietus therefor, and make the proper entries in his books.

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ARTICLE VII.

Of the surplus revenue fund.

SECTION
92. Of what to consist.
93. Principal to be loaned.—Interest paid for support of schools.
94. Interest, how drawn from county treasury.
95. Loans to be made by county auditor—rules therefor, and for enforcing payment.
96. Same subject—advertisement—deeds—reports—loans confined to inhabitants of the county—limited to $300—fees—lands mortgaged, where to be situate—sales, where made.
97. Counties held liable for the fund.
98. Reports, where and when made.
99. Forms and modes of book keeping to be prescribed.
100. Examination by board of county commissioners.
101. Report thereof, and contents.
102. Copies where to be sent.
103. Penalty on officers for omission of duty.
104. Compensation.

Surplus revenue fund.

SECT. 92. The surplus revenue fund shall, as heretofore, consist of that portion of the moneys deposited by the United States with this state which was distributed among the counties in this state, by virtue of the act approved 6th February, 1837, entitled, "An act to provide for distributing so much of the surplus revenue of the United States as the state of Indiana may be entitled to and receive, by virtue of an act of congress, approved 23d June, 1836."

Fund, how appropriated.

SECT. 93. The principal of all money belonging to said fund, as the same is received into the county treasury, shall be loaned out to the citizens of such county; and the interest paid out for the support of common schools in such county.

Interest, how drawn from county treas'y.

SECT. 94. For such interest the county auditor shall draw his warrant on the treasurer, when the same is demanded, as provided for in section one hundred and thirteen of chapter fourteen.

Loans to be made by co'ty auditor—rules therefor. Certain sections adopted.

SECT. 95. Such loans shall be made by the county auditor; and for the government and regulation of the same, sections twenty-eight to sixty-four inclusive, of this chapter, are adopted and made a part of this article, except as the same are modified in the next succeeding section.

Notice of sale of land.

SECT. 96. 1. The advertisements provided for in the fifty-third section, shall be in some public newspaper published in the county where the land is situate, if any is there published; otherwise in such newspaper published in this state, having the most general circulation in such county; and also, by notices set up at the court house door, and in three public places in the township in which the land to be sold is situate.

Auditor and treasurer to mean county auditor and treasurer.

2. The auditor and treasurer named in the several sections of this chapter, recited and adopted in the preceding section, shall, when the same are applied to the purposes in this article specified, be construed to mean the auditor and treasurer of the proper county.

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PART 1.

Deeds, by whom made, and where recorded.

3. The deeds on foreclosures of mortgages shall be executed by the county auditor, and before delivery, shall be entered on the books of the county treasurer.

Reports, where and when made

4. The reports mentioned in sections sixty-three and sixty-four, referred to and adopted in the preceding section, shall be made to the board of county commissioners at their first session after the first day of March, annually.

Loans to inhabitants of county.

5. In making loans of said funds, preference shall be given to the inhabitants of the county to which the same belong, if adequate security is offered on land.

Not to exceed $300.

6. The amount loaned to any one person or company shall not exceed three hundred dollars.

Fees.

7. The following fees only shall be charged for the services specified:

For each appraiser, - - -	50 cents.
For recording mortgage, - - -	50 "
For drawing same, - - -	50 "
For taking the borrower's affidavit, - -	12½ "
For clerk and recorder's certificate, each,	25 "

Land to be in the county.

8. No land shall be received as security for any such loan, unless situate in the county where such loan is made.

Sales, where made.

9. Sales of delinquent lands shall be made at the court house door in such county.

Counties to be liable for the fund.

SECT. 97. The several counties shall be held liable for the preservation of said fund, and the payment of the annual interest thereon, at the rate established by law.

Reports, to whom and when made.

SECT. 98. Regular reports of the operations of their respective offices in regard to such loans, and payment for school purposes, shall be made by the treasurer and auditor, to the board of county commissioners, at the first session after the first day of March, annually.

Forms, &c. to be prescribed.

SECT. 99. Proper forms and modes of book keeping for said offices shall, from time to time, be prescribed by the auditor of state.

County board to examine annually.

SECT. 100. The board of county commissioners shall, annually, at their first session after the first day in March, in the presence of the county auditor and treasurer, examine the accounts and proceedings of the county auditor and treasurer, in relation to the said fund: they shall also inquire into the safety of the several loans made of said fund, and examine and compare the cash, notes, and mortgages, with the books and reports.

Report to be made, and its contents.

SECT. 101. Said board shall make report of the result of such examination, showing,

1. The amount refunded and the amount reloaned, and the safety thereof.

2. The amount of interest received, and the amount paid out.

Copies to be sent.

SECT. 102. Such report shall be entered on the minutes of said board, and copies thereof signed by the members of the board, the auditor, and the treasurer, shall be transmitted to the auditor of state and superintendent of common schools.

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SECT. 103. Any member of the board of county commissioners, or any county auditor, or treasurer, neglecting to perform any of the duties required in the two preceding sections, shall be liable to indictment therefor, and to be fined in any sum not exceeding one hundred dollars, nor less than twenty. Penalty for omission of duty.

SECT. 104. The county auditor and treasurer shall each receive as his compensation for the duties in this article imposed, the sum of one half of one per centum on the amount of said fund on loan in his county, at the time of making his annual settlement, and on which interest shall have been paid for the current year; such compensation to be paid out of said fund. Compensation.

ARTICLE VIII.

Of the congressional township and school district funds.

SECTION
105. Congressional township fund, of what to consist.
106. Lands belonging to, how managed.
107. Payments to be made to school commissioner.
108. Auditor to sue for all money due.
109. School commissioner's receipt to be filed with auditor.
110. Auditor to make loans—certain sections adopted for the regulation and collection of loans.
111. Exceptions as to. 1. Notice of sales. 2. Who meant by auditor and treasurer. 3. Deeds. 4. Reports. 5. Loans confined to inhabitants of township. 6. Limited to three hundred dollars. 7. Fees. 8. Land to lie in county. 9. Sales, where made.
112. Separate accounts to be kept with each township.
113. Interest, how drawn for.
114. Counties held liable for fund.
115. Certain other sections adopted.
116. School district funds, what and how loaned.
117. Same.
118. Compensation of auditor and school commissioner.

SECT. 105. The congressional township fund shall, as heretofore, consist of the lands donated by the United States for the use of schools in each township, denominated the sixteenth section, and the moneys accruing therefrom, by sale or otherwise; also of any other property or money in any manner donated for that purpose. Congressional township fund.

SECT. 106. Until such "sixteenth section" shall be sold, the same, and all rents and profits derived therefrom, shall be managed as directed in the thirteenth article of this chapter, on the subject of the lands belonging to common schools. Lands, how managed.

SECT. 107. All such moneys loaned out shall, as the same become due, together with the interest thereon as it becomes due, be paid to the school commissioner of the proper county. Fund to be paid to school commissioner.

SECT. 108. For all moneys due said fund remaining unpaid, the county auditor shall cause suits to be instituted in the name of the obligee or payee of the instrument sued on, and the money recovered to be paid to the school commissioner of his county, and the receipts therefor filed with him. Auditor to sue for money due.

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PART 1.

School commissioner's receipt to be filed with county auditor.

SECT. 109. In all cases of payments to the school commissioner, his receipts shall be filed with the proper county auditor, who shall charge the school commissioner and credit the fund, and shall give the person entitled thereto a proper quietus, or such other receipt or voucher as the case may require.

Loans made by county auditor, and regulations therefor.

SECT. 110. The principal of said fund shall be loaned out by the county auditor; and in making such loans, he and all concerned shall be governed by the rules and regulations laid down for the conduct of the auditor of state and others, in sections twenty-eight to sixty-four, inclusive, of this chapter, except as the same are modified in the next following section.

Notice of sale.

SECT. 111. First. The advertisement provided for in the fifty-third section shall be in some public newspaper, published in the county where the land is situate, if any is there published; otherwise in such newspaper published in this state having the most general circulation in such county; and also by notices set up at the court house door, and in three public places in the township in which such land is situate.

Auditor and treasurer defined to mean county auditor and school commissioner.

2. The auditor and treasurer named in the sections of this chapter recited in the last preceding section, shall, when applied to the purposes in this article specified, be considered as referring respectively to the county auditor and school commissioner of the proper county.

Deeds, how made and recorded.

3. The deeds to be executed for lands sold on foreclosure of such mortgages, shall be executed by the county auditor, and before delivery be recorded in the school commissioner's office.

Reports, when and to whom made.

4. The reports mentioned in sections sixty-three and sixty-four, shall be made to the board of county commissioners at their first session after the first day of March annually.

Loans to be made to inhabitants of township.

5. In making loans of said fund, preference shall be given to the inhabitants of the township whose funds are to loan, if adequate security is offered.

Not to exceed $300.

6. The amount loaned to any one person or company shall not exceed three hundred dollars.

Fees.

7. The following fees only shall be charged for the services required, viz.:

To each appraiser,	50 cents.
For recording mortgage,	50 cents.
For drawing mortgage,	50 cents.
For taking the borrower's affidavit,	12½ cents.
Clerk and recorder's certificate each,	25 cents.

Land mortgaged to be in the county. Sales, where made.

8. No land shall be received as security for any such loan, unless situate in the county where such loan is made.

9. Sales of delinquent mortgaged lands shall be made at the court house door of the county in which the same is situate.

Separate accounts to be kept with each township, &c.

SECT. 112. Separate accounts shall be kept of the funds belonging to each township and of the transactions in relation thereto; and the same shall distinguish the sums received for principal, and those received for interest.

Interest, how drawn for.

SECT. 113. For such amount of the interest received on such loans as shall be necessary for the support of schools, and

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shall be demanded as provided for in section one hundred and twenty-one, of chapter fourteen, the auditor shall draw his warrant on the school commissioner.

Counties liable for fund.

SECT. 114. The several counties shall be held liable to the inhabitants of the respective congressional townships for the preservation of said fund, and the payment of the annual interest thereon, at the rate established by law.

Certain sections adopted.

SECT. 115. For the further and better regulation of said fund, sections ninety-eight, ninety-nine, one hundred, one hundred and one, one hundred and two, and one hundred and three, of this chapter, relating to the surplus revenue fund, are hereby adopted and made a part of this article; and the respective duties in said sections imposed on the county treasurers are hereby imposed on the school commissioners of the proper counties.

School district funds may be loaned.

SECT. 116. Any school district having funds to spare from the support of schools therein, may, by vote, direct the payment thereof to the proper school commissioner, to be loaned for the use of said district, and accounted for according to the rules and regulations herein prescribed for the loaning of, and accounting for, congressional township funds, except as is provided in the next succeeding section.

Rules.

Same.

SECT. 117. First. Such district may, at any time, by vote, withdraw such fund from loan as aforesaid. 2. The same, when so withdrawn, shall be repaid to the treasurer of such district, on the order of the district trustees. 3. Until so withdrawn, the interest accruing thereon shall be paid to the treasurer of such district, on the like order, on the first Mondays of March and September annually.

Compensation.

SECT. 118. For their compensation herein, the county auditor and school commissioner shall each be allowed one half of one per centum on the amount of said funds on loan in their counties at the time they make their annual settlement with the county commissioners, and on which interest shall have been paid for the current year.

ARTICLE IX.

Of the three per cent. fund, and the management thereof.

SECTION

119. How obtained from United States' treasury.
120. Accounts, how kept.
121. How obtained from state treasury.
122. How applied.
123. Money appropriated to unorganized counties.

SECTION

124. Same. How expended.
125. Same subject.
126. Reports of state auditor and treasurer.
127. Reports of county auditor and treasurer.

Money, how drawn from United States.

SECT. 119. The money due, or hereafter to become due, to this state from the United States, on account of the three per

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PART 1.

cent. fund, shall be drawn by the treasurer of state, who shall file his receipt therefor with the auditor of public accounts.

Accounts, how kept.

SECT. 120. The auditor of public accounts and the treasurer of state shall open an account with the three per cent. fund on their books, for all sums received and expended after the passage of this chapter.

Money, how obtained from state treasury.

SECT. 121. All money arising from the three per cent. fund, due, or to become due, from the state treasury to any county, from former or future appropriations, shall be audited and paid to the proper county treasurer, on the draft of the county auditor, who shall charge the treasurer with the same.

Money, how applied.

SECT. 122. The money arising from former appropriations shall be paid out and applied as may heretofore have been directed; and all sums not heretofore directed to be applied, and all arising from future appropriations, shall be paid out and applied, at the discretion of the board of county commissioners, upon the roads of the respective counties, unless otherwise directed by the act appropriating the same.

Money appropriated to an unorganized county.

SECT. 123. The sums appropriated to any unorganized county may be drawn from the state treasury whenever the board of county commissioners of the county to which such unorganized county is attached for judicial purposes may direct.

How expended.

SECT. 124. Such sums shall be expended in the most beneficial manner upon the roads within such unorganized county, under the direction of the board of county commissioners of the county to which such unorganized county may be so attached.

Same.

SECT. 125. But such board may retain, out of any such fund, any sum expended by such organized county in the survey and location of state roads within such unorganized county.

Reports of state auditor and treasurer.

SECT. 126. The annual reports of the auditor and treasurer of state shall contain the necessary statements showing the transactions had in relation to, and the situation of said fund.

Reports of county auditor and treasurer.

SECT. 127. The annual reports of the several county auditors and treasurers shall contain the necessary statements, showing the receipts and disbursements, and the situation of said fund, belonging to their respective counties.

ARTICLE X.

Of the common school fund created by bank profits.

SECTION

128. Of what it shall consist.
129. When used by the state, to be refunded.
130. When used for redemption of five per cent. treasury notes, to be refunded.
131. When used for payment of state bonds, to be refunded.
132. How to be refunded.

SECTION

133. Fund, how managed.
134. Interest on state debt, how paid.
135. Bank dividends, how disposed of.
136. Cashier to give notice of dividends.
137. Commissioners of sinking fund, how to settle.
138. Treasurer of state, how to apply dividends.

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ARTICLE 10.

Fund consists of what.

SECT. 128. A common school fund shall consist of the profits derived from the state bank, as set apart and designated in the one hundred and fourteenth section of the act establishing a state bank, approved January 28th, 1834, and such additions as shall be made thereto by donation or otherwise.

Fund, when used by state.

SECT. 129. So much of said fund as shall heretofore have been or may hereafter be paid into the state treasury, and shall have been or may be applied to the use of the state, shall remain a debt against the state, due to said fund, to be repaid with interest.

When used for redemption of treasury notes.

SECT. 130. So much of said fund as shall be applied to the redemption of the five per cent. treasury notes, issued for payment to the bank on internal improvement account, shall be and remain a debt against the state, due to said fund, to be repaid with interest.

When used for payment of state bonds.

SECT. 131. So much of said fund as shall be applied to the payment of principal and interest of the bonds issued for the advance of the fourth instalment of surplus revenue, shall be and remain a debt against the state, due to said fund, to be repaid with interest.

How refunded.

SECT. 132. Whenever payment for the bonds given for said fourth instalment shall be completed, the commissioners of the sinking fund shall transfer to the common school fund so much of any excess of stock in said bank, belonging to the state, over and above the charter capital, as will be sufficient to pay the amount of such common school fund and interest thereon as shall have been applied to the payment of said bonds and said five per cent. treasury notes.*

Fund, how managed.

SECT. 133. The bank stock belonging to the state, and the loans at the sinking fund, and the profits and increase thereof, shall, as heretofore, continue under the management of the commissioners of the sinking fund, except as hereinafter directed.

Interest on state debt, how paid.

SECT. 134. The amount of money that shall be necessary to pay the semi-annual interest due on the state debt for which such sinking fund is pledged, shall continue to be paid by the said commissioners out of the dividends of the stock in the state bank belonging to said fund.

Bank dividends, how disposed of.

SECT. 135. The amount so necessary shall be carried to the credit of said commissioners on the books of the branches, declaring such dividends, and the residue of such dividends shall, in like manner, be carried to the credit of the treasurer of state.

Notice to be given by cashier.

SECT. 136. Immediately after such dividend is declared, the cashier of the state bank shall give notice thereof to the auditor and treasurer of state, setting forth the respective amounts so carried to the credit of said commissioners and said treasurer in the respective branches.

Commissioners of sinking fund, how to settle.

SECT. 137. For the amount so carried to the credit of said commissioners, they shall, in due time, present to the auditor of state the dividend warrants by them therewith paid.

*This section is now inoperative, the stock mentioned having been surrendered and cancelled.

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PART 1.

Treasurer of state, how to apply dividends.

SECT. 138. The amount so carried to the credit of the treasurer of state, shall be applied to the payment of the principal and interest of the bonds issued to the state bank for her advance of the fourth instalment of the surplus revenue, in the manner as set forth and provided in section twenty-three of this chapter.*

ARTICLE XI.†

Of the lands belonging to the university.

SECTION
139. County auditor to have superintendence of university lands.
140. Divisions, and price established.
141. Terms of sale.
142. Two or more persons applying, to be offered to highest bidder.
143. Reserved lots, how sold.
144. Money to be paid into county treasury.
145. Treasurer's receipt to be filed with county auditor.
146. Duty of auditor thereupon.
147. Proceedings on final payment.
148. What rights the certificate of purchase shall confer.
149. Books to be kept and reports made.
150. Payments into state treasury, when and how made.
151. Auditor may lease improved land.
152. Compensation.
153. Patents, how made.
154. Record book transferred to secretary of state.
155. Books, maps, &c. transferred.

County auditor to have superintendence.

SECT. 139. The auditor of the county of Monroe shall have the general care and superintendence of all the lands remaining unsold in the said county, granted for the use of the Indiana University, or which being sold, may become forfeited to the state.

Same.

The auditor of the county of Gibson shall have the like care and superintendence of all the lands remaining unsold, or which may become forfeit in said county, granted for the like purpose.

Divisons and price established.

SECT. 140. The divisions of said land heretofore made shall continue, as also the rates heretofore established, and the minimum prices affixed thereto, being, first rate at two dollars and fifty cents per acre; second rate at one dollar and fifty cents per acre; and third rate at seventy-five cents per acre.

Terms of sale.

SECT. 141. Said auditors shall have authority to sell the lands so granted in their respective counties, except the lots mentioned in the one hundred and forty-third section of this chapter, at not less than the prices affixed thereto, on the following terms:

1. One fourth of the purchase money to be paid at the time of sale, with interest on the residue for one year in advance.

2. Such residue to remain on interest at the option of the purchaser for ten years, the interest being paid annually in advance.

*This section is now inoperative, the debt mentioned having been since paid.

† This article, so far as it applies to the care and disposition of university land, is repealed. See ante p. 248, sect. 69.

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3. On failure to pay such interest when due, the contract of sale shall be forfeited, and such land revert to the state, and may be immediately re-sold. ARTICLE 11.

When to be offered to highest bidder.

SECT. 142. If two or more persons shall apply at the same time to purchase any of such lands, it shall be the duty of said auditor to offer the same to the highest bidder.

Reserved lots, how sold.

SECT. 143. The lots remaining unsold, of the reserved sections in Monroe county, shall be sold by the county auditor, at the prices heretofore affixed to them; and the proceeds thereof, as received at the county treasury, shall be paid to the treasurer of the university, for the purposes as specified in the acts providing for the sale of said sections, approved 29th January, 1830, and 4th February, 1837.

Money to be paid into co'ty treasury

SECT. 144. All money due or to become due, arising from the sale of such land or lots, whether principal or interest, or derived from rents of land unsold, or otherwise, shall be paid into the treasury of the county in which the lands lie.

Receipt therefor, and where filed.

SECT. 145. The treasurer shall give a receipt therefor, distinguishing between principal, interest, rent, or other payment, which shall be filed with the auditor of the proper county.

Duty of auditor thereupon

SECT. 146. On the filing of such receipt, if the same shall be for a first payment and interest on the residue, the auditor shall give such purchaser a certificate of purchase, containing the name of the purchaser, a description of the land purchased, the sum paid, and the sum remaining due thereon. If the same shall be for any subsequent payment of principal or interest, or for rent, he shall endorse the amount so paid on the back of the original certificate or lease, as the case may require.

Proceedings on final payment.

SECT. 147. When final payment is made, the original certificate shall be surrendered to the auditor, and by him filed away; and he shall give to the purchaser two final certificates, stating the whole amount of principal, and the whole amount of interest paid; one of which certificates shall be forwarded to the auditor of state; and on presentation of the other to the auditor of state, if in all things correct, he shall countersign the same, which shall entitle the owner to a patent, to be issued by the governor, for the land so paid for.

What rights the certificate of sale shall confer.

SECT. 148. The certificate of sale for any such land shall not confer upon the purchaser any right to cut down or destroy any kind of wood or timber, standing or growing upon such land, other than shall be necessary for the erection of fences and buildings on such land, for fire-wood on the premises, and in fairly improving such land for purposes of cultivation.

Books to be kept. Reports to be made.

SECT. 149. The said county auditors and treasurers shall keep proper books of account, and shall make annual reports of all their transactions, and of all money received, to the auditor of state.

Payments to state treasury.

SECT. 150. At the time of making such reports, the said treasurers shall pay into the state treasury all the money received by them, and shall file the treasurer's receipt with the auditor of state.

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Leases.

SECT. 151. Said county auditors may, from time to time, lease any unsold improved land within their respective counties, for terms not exceeding one year, and until the same can be sold; and such leases shall contain proper covenants to guard against trespass and waste.

Compensation.

SECT. 152. The county auditors and treasurers shall each receive for their compensation two per cent. on the amount of money so paid into the county treasury, to be paid out of the proceeds of said lands.

Patents, how made.

SECT. 153. Patents for lands sold shall be made by the governor, and recorded in the office of the secretary of state.

Record book.

SECT. 154. The record books of former patents shall be removed to the office of the secretary of state.

Books, maps, &c. transferred

SECT. 155. All the books, maps, notes, and other papers relating to the said townships of land, in the possession of the present commissioners, shall be transferred by the holders thereof, to the auditor of the proper county.

ARTICLE XII.

Of the lands belonging to the saline fund.

SECTION
156. County auditors to have superintendence.
157. Books, &c. transferred.
158. Former divisions, rates, prices, &c. continued.
SECTION
159. Sales, how made.
160. County treasurers to receive all money.
161. Certain sections adopted.

Co'ty auditors to have care of lands.

SECT. 156. The auditors of the counties of Orange, Washington, and Brown, shall severally have the general care and supervision of the lands reserved for saline purposes in their respective counties, remaining unsold, or which being sold may become forfeit to the state.

Books, &c. transferred.

SECT. 157. The books, maps, notes, leases, and other papers relating to said lands, in the hands of the present commissioners, shall be by them transferred to the auditors in their respective counties.

Present divisions, rates, prices, &c. continued.

SECT. 158. The division of said lands as heretofore made shall continue, as also the rates heretofore established, and the minimum prices affixed thereto.

Sales, how made.

SECT. 159. The said auditors shall have authority to sell all such lands in their respective counties, at not less than the prices affixed thereto, on the terms and conditions as provided in the one hundred and forty-first and one hundred and forty-second sections of this chapter, in relation to lands belonging to the university.

County treasurers to receive all money

SECT. 160. The treasurers of the said counties of Orange, Washington, and Brown, shall receive all moneys due for said

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lands in their respective counties, whether for principal, interest, rent, or otherwise. ARTICLE 13.

SECT. 161. For the regulation of the said county auditors and treasurers, and all others concerned in the transaction of all business connected with said lands, sections one hundred forty-five to one hundred fifty-five inclusive, of this chapter, are hereby adopted as a part of this article. Sections adopted.

ARTICLE XIII.

Of the lands belonging to common schools.

SECTION

162. Trustees of township to have superintendence.
163. May lease for three years.
164. When for ten years.
165. Land may be acquired, how.
166. Power to enforce contracts, &c.
167. Power over personal property.
168. Rents to be paid to township treasurer.
169. Petition for sale of land and proceedings.
170. Same.
171. Record to be made.
172. Vote, how taken.
173. Majority required.
174. Certificate thereof.
175. Record thereof, and proceedings of trustees thereon.
176. Proceedings when township is situate in more than one county.
177. Return to county commissioners and proceedings thereon: 1. Sale how made. 2. Notice. 3. Sale, where made.
178. Terms of sale.
179. Forfeitures for non-payment, and re-sale.
180. Excess how disposed of.

SECTION

181. Forfeiture, how prevented by subsequent payment.
182. When first purchaser may be sued.
183. By whom.
184. When owner may redeem.
185. Private sale, when made.
186. Record of sale.
187. Rights of purchaser.
188. Ten per cent. damages for failing to make first payment.
189. Certificates may be assigned.
190. Purchaser may retain on loan.
191. But may pay at any time.
192. Lost certificate, how replaced.
193. Payments to be made to school commissioner and his receipt filed with county auditor.
194. County auditor's duty therein.
195. Deed and record thereof.
196. How acknowledged.
197. Its effect.
198. School district may acquire lands.
199. May direct sale thereof.
200. Proceedings thereon.
201. Proceedings and conveyance.
202. Money, to whom paid.
203. Officers prohibited the use of funds.
204. Penalty therefor.

SECT. 162. The custody and control of all lands belonging to any congressional township shall be with the trustees of such township. Trustees of township to have care of lands.

SECT. 163. They shall have power to lease such lands for any term not exceeding three years, reserving rents payable in money, property, or improvements to be made on the land. Power to lease for three years

SECT. 164. But if directed by a vote of a majority of the qualified voters of such township, such leases may be made for any term not exceeding ten years. When for ten years.

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Lands may be acquired, how.

SECT. 165. Any congressional township may acquire any land by devise or gift, or by purchase and conveyance, and hold the same for the benefit of such township.

Power to enforce contracts, &c.

SECT. 166. The said trustees shall have and exercise all the rights and powers of a landlord, either in their official names or in the corporate name of the township, in coercing the fulfilment of contracts relating to such lands, and preventing waste or damage, or of recovery for the same when committed.

Power over personal property.

SECT. 167. Said trustees shall preserve all personal property belonging to such township, derived from rents or otherwise, and may sell the same, from time to time, in such manner as will best promote the interest of such township.

Rents to be paid to township treasurer.

SECT. 168. All money derived from rents shall be paid to the township treasurer, to be expended under the direction of the township trustees.

Petition for sale and proceedings

SECT. 169. At any time when five qualified voters of any congressional township shall petition the trustees of such township, setting forth their desire for the sale of all the land, or of any particular tract of land, belonging to such township, said

Notice.

trustees shall insert in the notices for the annual election of trustees, the further notice that a balloting will then be had to determine whether the land so petioned for shall be sold or not.

Same.

SECT. 170. If such petition shall not have been filed with said trustees before they shall have published the notice for the annual election aforesaid, action on such petition shall be suspended until the time for advertising the next succeeding annual election for trustees.

Record of proceedings.

SECT. 171. A copy of such petition shall be entered on the book containing the record of the proceedings of such trustees, together with the time of its reception and their action thereon.

Vote, how taken.

SECT. 172. Each voter favoring the sale of such land, shall write on the ballot used by him on such occasion, (in voting for a trustee or trustees,) the word "sale;" if opposed to the sale he shall write the words "no sale."

Majority required.

SECT. 173. No such sale shall be allowed unless a majority of all the voters in such township shall vote in favor of it, and unless the number of voters constituting such majority shall exceed fifteen.

Certificate thereof.

SECT. 174. A certificate showing the number of votes given for and against such sale, shall be made out and signed, and within seven days after such election, filed with the clerk of the trustees of said township.

Records thereof, and proceedings of trustees thereon.

SECT. 175. The said trustees shall enter such return on their record book; and, if satisfied that a majority of all the voters in such township have voted for a sale of any such lands, and that the number voting with such majority exceeds fifteen, they shall enter their opinion on their record book, and shall proceed, 1. To divide the lands so voted to be sold into such lots as will insure the best price. 2. To affix a minimum price to each lot, not less than one dollar and twenty-cents per acre, below which it shall not be sold. 3. To certify such division

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and appraisement to the proper county auditor, together with a copy of all their proceedings had in relation to the sale of said lands.

When township shall be in more than one county.

SECT. 176. If the township shall lie in more than one county, the said trustees shall determine to the auditor of which of said counties such certificate shall be returned, and thereafter the county so selected shall have jurisdiction of the funds arising from such sale.

Proceedings of county commissioners.

SECT. 177. Such certificate and return shall, by such auditor, be laid before the board of county commissioners in such county at their first meeting thereafter; and said board, if satisfied that the requirements of the law have been substantially complied with, shall order and direct said land to be sold, which sale shall he conducted as follows:

Sale, how made.

1. Such sale shall be made by the auditor and school commissioner.

Notice.

2. At least sixty days' notice of the same shall be given, by posting up notices thereof in three of the most public places in the township where the land is situated, and at the court house door, and by publication in a newspaper published in said county, if any, otherwise in the newspaper having the greatest circulation in such county, if there be any convenient.

Where made.

3. Such sale shall be made at the court house door, within business hours, and may be adjourned from day to day until completed.

Terms.

SECT. 178. One fourth of the purchase money shall be paid in hand, and legal interest for the residue for one year in advance, and the residue in twenty-five years from such sale, with like interest annually in advance.

Forfeiture for non-payment, and re-sale.

SECT. 179. On failure to pay any such annual instalment of interest when the same becomes due, the said contract shall be forfeited, and said land shall immediately revert to the township; and the auditor and school commissioner shall forthwith proceed to sell the same, on the terms above specified.

Excess, how disposed of.

SECT. 180. If on such second sale said land shall produce more than sufficient to pay the sum owing therefor, with interest and costs, and five per cent. damages, the residue shall, when collected, be paid over to the first purchaser, or his legal representatives.

Forfeiture, how prevented by subsequent payment.

SECT. 181. At any time before sale, the payment of the sum due, with interest for the delay and all costs, together with five per cent. damages on the whole sum owing for said land, shall prevent such sale, and revive the original contract.

First purchaser may be sued for waste, &c.

SECT. 182. In case of such forfeiture, the original purchaser shall be liable to be sued for any waste or unnecessary injury which he may have done to said land.

By whom sued.

SECT. 183. Such suit shall be prosecuted by the auditor, in the name of the state, for the use of the proper congressional township.

Owner may redeem.

SECT. 184. The former owner of the delinquent land so sold, his heirs, or assigns, may, at any time within one year after such

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sale, redeem such land, by paying to the purchaser, his heirs, executors, administrators, or assigns, or by depositing with the school commissioner of the proper county, the amount of purchase money, with interest thereon at the rate of ten per cent. per annum, together with all subsequent payments for all taxes, interest, or principal, which such purchaser, or those claiming under him, may have made thereon.

Private sale.

SECT. 185. When any land shall be offered for sale, and shall remain unsold, the county auditor may dispose of the same at private sale, for the best price that can be had therefor, not being less than the minimum price affixed thereto.

Record of sale.

SECT. 186. A certified statement of such sale shall be made and signed by the county auditor and school commissioner; and, being first recorded by the county auditor in the records of the board of county commissioners, shall be delivered to the purchaser when he makes his first payment, and shall entitle him to a deed when the terms of such purchase shall be fully complied with.

Rights of purchaser.

SECT. 187. Every purchaser, until forfeiture, shall be entitled to all the rights of possession before existing in such township, and of all rights and remedies for rents becoming due, or breaches of covenant accruing after his purchase, under any lease existing at the time of his purchase, and for all waste committed thereafter.

Ten per cent. damage for failing to make first payment.

SECT. 188. Any person buying at any such sale, and failing to make the first payment as above required, shall pay ten per centum on the sum bid, to be recovered by action before any court having jurisdiction, to be prosecuted for by the county auditor, in the name of the state, for the use of the proper township; and the auditor and school commissioner shall be competent witnesses.

Certificates, how assigned.

SECT. 189. Certificates of purchase may be assigned, but no such assignment shall be valid unless acknowledged before the county auditor, who shall make a record of the same.

Purchaser may retain on loan.

SECT. 190. The purchaser of any such land, when the residue of the purchase money therefor is or shall become due, may retain the same as a loan from year to year, on payment annually in advance of the interest on the sum due, at the rate of interest then established by law for the loan of such funds; but he shall receive no deed for such land until full payment is made: and the general assembly may at any time hereafter change the law so as to require payment of such purchase money after the original credit has expired, giving the party one year's notice of such requirement.

But may pay at any time.

SECT. 191. Purchasers may, at any time before due, pay any part or the whole of such purchase money.

Lost certificate, how replaced.

SECT. 192. When any such certificate shall be lost or destroyed before a deed be made, on proof thereof, by affidavit of the person interested, or other competent testimony, to be filed with the county auditor, and after three months' notice of the intention to apply for a new certificate shall have been given,

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in some newspaper published nearest to where the land is situate, the said auditor may issue the same to the person entitled thereto.

Money to be paid to school commissioner, and his receipt filed with county auditor.

SECT. 193. The several instalments of purchase money and interest, and all costs and damages above provided for, shall be paid to the school commissioner of the proper county, and his receipt therefor filed, by the person paying, with the county auditor.

Duty of county auditor.

SECT. 194. When such payment is in completion of any contract of sale, the amount of such receipt shall be endorsed by the county auditor on the certificate of purchase held by the purchaser.

Deed and record thereof.

SECT. 195. On full payment for any such tract of land, a deed shall be executed therefor by the county auditor, which, before delivery, shall be attested by the school commissioner, and entered on the record book of the board of county commissioners.

How acknowledged.

SECT. 196. Such deed shall be acknowledged by the county auditor as in other cases, the grantee defraying the expense thereof.

Its effect.

SECT. 197. And the same, when thus executed and delivered, shall vest in the grantee, his heirs, and assigns forever, all the right, title, and interest of the inhabitants of the proper township to the land therein contained.

School district may acquire lands.

SECT. 198. Any school district may acquire any land by gift, devise, bargain, and sale, or otherwise, and hold the same for the use of schools in such district.

Same may be ordered to be sold.

SECT. 199. The legal voters of any such district may, at any regular meeting, by a vote of a majority, direct the sale of any such tract of land.

Proceedings thereon.

SECT. 200. In such case the district trustees shall record such vote in the record book of their proceedings, and shall proceed to divide such land, if necessary, and to affix a minimum price thereon, and to settle upon the terms of payment.

Same.

SECT. 201. Such sale shall be made, and the conveyance therefor executed, in the name of the inhabitants of such district, by the clerk of the district.

Money, to whom paid.

SECT. 202. All money derived from such sale shall be paid to the district treasurer, whose receipt shall be filed with the district clerk, and a certificate or other evidence of the same shall be given to the person filing.

Officers not to use fund

SECT. 203. No county auditor, treasurer, or school commissioner shall borrow, or use, or derive any benefit from the loan or use of the funds in this chapter named, in their hands to be loaned.

Penalty therefor.

SECT. 204. Any county auditor, treasurer, or school commissioner offending against the provisions of the last preceding section, shall be liable to indictment, and on conviction to be fined in any sum at the discretion of the jury trying the same.

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ARTICLE XIV.

Of the Wabash and Erie canal lands, and of the selection, classing, rating, and sale thereof.

SECTION
205. Selections, how made.
206. Returns, what to contain.
207. Pre-emptions, how settled and paid for.
208. Former rates and classification to remain.
209. New selections to be put into three classes.
210. Price of first class, $5 00; second class, $3 50; third class, $2 00.
211. Land to be rated and classed by commissioners.
212. Land office at Peru for upper Wabash land.
213. Land office at Delphi for lower Wabash land.
214. Land once offered to remain subject to private entry.
215. New selections to be first offered at public sale; terms of sale.
216. To be bid in for state when a combination exists among bidders.
217. When to be re-exposed, and how.

SECTION
218. Twenty-five per cent. penalty on refusal to pay, and land to forfeit in one year.
219. Forfeited land may be re-entered.
220. Certificate of purchase—its contents.
221. Quarterly statements of sales.
222. Quarterly statements of payments and receipts to be given.
223. Final certificates to be given, and duplicates sent monthly to state auditor.
224. Auditor to examine, countersign, and file same with the secretary of state.
225. Patent, how obtained.
226. Fee therefor.
227. Books and accounts, how to be kept.
228. Purchasers may pay at any time before due.
229. Certificates may be assigned, and how.
230. Lost certificate, how replaced.
231. Auditor to prescribe and transmit forms.

Selections, how made.

SECT. 205. The future selection of all lands granted by the United States for the construction of the Wabash and Erie canal, shall be made by such agent or agents as the governor may appoint.

Returns, what to contain.

SECT. 206. The returns of such agents shall show the land selected for the canal above the mouth of Tippecanoe river, and that for the canal below that point.

Pre-emptions, how settled and paid for.

SECT. 207. All pre-emption rights acquired under the laws now in force shall be settled and adjusted as follows:

1. The commissioner on the proper line shall appoint appraisers to assess the value of all permanent and valuable improvements made by any such pre-emptioner on the land claimed, according to fair cash prices.

2. If any person shall purchase any land subject to such pre-emption right, he shall pay to the pre-emptioner in hand, or by deposit made for his benefit in the land office, the value so assessed, before he shall be entitled to the possession of such land.

Former rates and classification to remain.

SECT. 208. All such canal lands as shall have been heretofore rated and classed, shall continue of the rate and class as now established.

New land, how classed.

SECT. 209. All such canal lands, not yet rated and classed, shall be placed in three classes, according to actual value, having regard to soil, situation, and other advantages.

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Price.

SECT. 210. The minimum price of the first class shall be five dollars per acre; of the second class three dollars and fifty cents per acre; and of the third class two dollars per acre.

To be rated, &c. by commissioner.

SECT. 211. Such classification and assessment of value shall be made by the commissioner on that part of said canal to which the lands to be classed and rated belong.

Land office at Peru.

SECT. 212. The office for the sale of lands belonging to the Wabash and Erie canal, above the mouth of Tippecanoe river, shall be continued at Peru, under the charge and direction of the commissioner of said line.

Land office at Delphi.

SECT. 213. The office for the sale of lands, belonging to the Wabash and Erie canal, below the mouth of Tippecanoe river, shall be kept at Delphi, under the charge and direction of the commissioner of said line.

Land once offered to remain subject to entry.

SECT. 214. All such canal lands as, having been once offered at public sale, is now subject to private entry, shall continue to be so subject to private entry at the prices affixed thereto.

Land to be first offered at public sale.

SECT. 215. All such canal lands as shall not have been offered at public sale, shall be so offered, by the proper commissioner, to the highest bidder, as follows:

Terms.

1. Three months' notice of the time of sale shall be given.

2. The time of sale and the manner in which the notice shall be published shall be designated by the governor.

3. One-fourth of the purchase money, with one year's interest in advance on the residue, shall be paid at the time of the purchase.

4. A like one-fourth of the purchase money, and interest in advance on the residue, shall be paid at the expiration of each year thereafter, until the whole is discharged.

Combination among bidders, land to be bid in;

SECT. 216. When the commissioner superintending any sale becomes satisfied that a combination exists among bidders, to cause any tract of land to sell for a less price than would otherwise be obtained, he shall bid off such tract on behalf of the state.

and the same resold.

SECT. 217. In the next advertisement of lands for sale, he shall note such tracts as particularly worthy of public attention, and again offer all such for sale as before.

Penalty of twenty-five per cent. for failure to pay when due.

Land, when to forfeit.

SECT. 218. On a failure to pay either principal or interest when due, a penalty of twenty-five per cent. on the amount unpaid shall be added thereto, and unless the whole sum, with interest thereon, shall be paid within one year thereafter, the contract of sale shall be vacated, and the land become forfeit to the state for the use of the canal.

Same may be entered.

SECT. 219. All lands remaining unsold at such public sale, and all lands becoming forfeit under the preceding section, shall thereafter remain to be entered by the first applicant at the rate affixed thereto on the terms aforesaid.

Certificate of purchase—its contents.

SECT. 220. A certificate shall be given to the purchaser, signed by the commissioner, containing a description of the tract sold, the amount of purchase money paid, and the amount due.

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Quarterly statement to be sent to state auditor.

SECT. 221. A full statement of all such sales shall be quarterly furnished to the auditor of state.

Receipts to be given, and like statements sent as to future payments.

SECT. 222. Proper receipts shall be given for all future payments of interest or principal for land sold, and quarterly statements thereof furnished to the auditor of state.

Final certificate to be given and duplicates thereof sent monthly.

SECT. 223. On full payment being made for any tract, a final certificate shall be given to the purchaser, and duplicates of all such certificates issued within each month, shall, at the end thereof, be forwarded to the auditor of state.

State auditor's duty in relation thereto.

SECT. 224. The auditor shall compare such final certificates with his books, and, if found correct, shall countersign and file the same with the secretary of state.

Patent, how obtained.

SECT. 225. The secretary of state shall thereupon prepare a patent for the lands so paid for, to be signed by the governor and recorded in the office of the secretary of state, and shall deliver the same to the patentee on delivery of the original final certificate.

Fee for patent.

SECT. 226. For the services aforesaid the secretary of state shall be entitled to one dollar for each patent, to be paid by the patentee.

Books and accounts, how to be kept.

SECT. 227. The commissioners aforesaid, and the auditor of state, shall each keep books of account, in which exact entries shall be made of the tracts sold, purchaser's name, principal and interest paid, and amount remaining due.

Payments may at any time be made.

SECT. 228. Purchasers may, at any time before due, pay any part or the whole of any such purchase money.

Assignment of certificate, how to be made.

SECT. 229. Certificates of purchase may be assigned; but no such assignment shall be valid unless acknowledged before some justice of the peace, or before the proper commissioner, and recorded in his office.

Lost certificate, how replaced.

SECT. 230. When any such certificate shall be lost or destroyed before patent issued, on proof thereof by affidavit of the person interested, or other competent testimony, to be filed with the proper commissioner, and after notice of the intention to apply for a new certificate shall have been given in some newspaper, published nearest to where the land is situate, for three months, the said commissioner may issue the same to the person entitled thereto.

Forms.

SECT. 231. The auditor of state shall, from time to time, devise and transmit to the commissioners such forms of books, accounts, certificates, and reports, as to him may seem necessary to carry out the provisions of this article.

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ARTICLE XV.

Regulations concerning the protection of the public lands, and of lands mortgaged to the state, and the payment of charges thereon.

SECTION
232. Sheriff may be required to inquire as to waste, and to report.
233. Auditor to direct prosecutions therefor.
234. Purchaser not to injure lands, &c.
235. Trespass, how punished.
236. Damages, how appropriated.
237. Ca. sa. may be issued therefor.
238. Charges on state property, how paid.
239. Sales therefor, when valid.
240. Purchasers of lands mortgaged, to take subject to state's lien.
241. Delinquent mortgager may be removed, and how.
242. Officer shall retain warrant—occupant returning may be again removed.
243. Costs, and how collected.
244. Purchaser from state entitled to same remedy for removal of occupant.
245. Proceedings may be enjoined, and how.
246. Same provisions to apply to lands mortgaged to surplus revenue and other funds.
247. Same provisions to apply to canal lands.

Sheriff shall inquire as to waste, and report.

SECT. 232. The auditor of public accounts may require the sheriff of any county in which may be situate lands belonging to the state, or lands mortgaged to the state for any of the funds in charge of such auditor, to examine and report to him any trespass that may be committed on such lands, or wilful waste done or permitted, whether by the mortgager, purchaser, or other person in possession, or otherwise, whereby the value of such lands may be lessened, to the probable injury of the state, or fund interested.

Auditor to direct prosecution—prosecuting attorney to conduct same.

SECT. 233. On receiving such report, said auditor may direct the prosecuting attorney for the proper county to commence suit against such trespassers, or persons who shall commit such wilful injury, for the penalty imposed in section two hundred thirty-five, or to present indictments against such trespassers or persons to the grand jury of the proper county, as such attorney shall judge most discreet: such attorney shall also cause the witnesses to support such prosecutions to be duly subpœnaed, and shall conduct such prosecutions to a final determination.

Purchaser not to injure, &c. land purchased until final payment.

SECT. 234. The purchase of any lands mortgaged to the state, or to any agent thereof, and sold on forfeiture, until final payment thereof be made, shall not confer on the purchaser any right to cut down and destroy any wood or timber, standing or growing upon such lands, or to remove or destroy any stone or other material thereon, other than shall be necessary for firewood on the premises, or for the erection of fences or buildings thereon, or in fairly improving any such land for the purposes of cultivation.

Trespass, &c. how punished.

SECT. 235. Every person who shall trespass on any land belonging to the state, or shall commit any such wilful waste or injury as mentioned in the next preceding section and in the two

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hundred and thirty-second section of this chapter, shall forfeit and pay three times the value or amount of injury done by him, or under his direction; and such value or amount shall not be assessed at less than ten dollars.

Damages, how appropriated.

SECT. 236. Such damages when received shall be paid into the county treasury of the county wherein recovered, for the use of common schools therein.

Ca. sa. may be issued therefor.

SECT. 237. Execution upon judgment recovered in actions for such damages may be had of the body of the defendants, and they shall be imprisoned thereon.

Charges on state property, how paid.

SECT. 238. All assessments legally made upon lands belonging to the state, in trust or otherwise, and all legal rents and charges thereon, shall be audited by the auditor of public accounts, and paid out of the state treasury, or other proper fund.

Sales therefor, when valid.

SECT. 239. No sale of such land on account of any assessment, rent, or charge, shall be valid, unless the same, before sale, shall have been presented to the auditor of state, and payment thereof required.

In case of land mortgaged.

SECT. 240. No sale of any land mortgaged to the state on account of any assessment, tax, or charge, shall be valid against the state, but the purchaser at such sale shall take the property subject to such mortgage.

When a delinquent mortgager may be removed from possession, and how.

SECT. 241. Whenever the principal or interest due on any mortgage shall be unpaid, and the auditor of public accounts shall deem it for the interest of the state to remove the occupant from the land so mortgaged and remaining delinquent, he shall cause notice to be given to the occupant to remove therefrom; and in case of his refusal or neglect to comply with such notice, the auditor shall issue his warrant to the sheriff of the county in which such land may lie, directing him to remove such occupant within ten days from the receipt of such precept, which duty such sheriff shall perform, and for that purpose he shall have the same powers as in the execution of a writ of habere facias possessionem.

Warrant to be retained.

SECT. 242. The sheriff shall retain such warrant in his hands; and if any person so removed shall return to settle or reside upon such lands without the consent of the auditor, such person shall be forthwith removed by the sheriff, pursuant to the warrant, and shall also be deemed guilty of a misdemeanor, and

Mortgager returning may be indicted.

be liable to presentment or indictment, and on conviction, to be fined or imprisoned at the discretion of the jury trying the cause; the fine not to exceed one hundred dollars, and the imprisonment not to exceed thirty days.

Costs, how charged and collected.

SECT. 243. Costs for the above proceedings shall be charged by such sheriff as in other cases, and collected on such warrant by levy and sale of any property of the defendant, found within such sheriff's county.

Purchaser from state entitled to same remedy.

SECT. 244. The purchaser of any land sold by the state for failure to pay the principal or interest due thereon, by virtue of any such mortgage or otherwise, shall be entitled to the same remedy for removal of the occupant from any such land, as is in

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the preceding sections provided, and on the application of such purchaser, verified by oath, setting forth that such occupant has failed or refused to remove on demand made, the auditor shall issue his warrant accordingly.

Proceedings may be enjoined.

SECT. 245. Injunctions to stay proceedings against said occupant may be granted by the proper circuit court, on bill filed showing good cause, and accompanied with bond and security sufficient to cover costs, and all the damages that may be incurred by the delay.

Provisions to apply to other funds.

SECT. 246. All the provisions of this article shall apply to lands mortgaged or belonging to the surplus revenue, congressional township, or county seminary funds; and the duties required of the auditor and treasurer of state, shall in all cases to which this section is applicable, be performed by the county auditor, county treasurer, and school commissioner, as the case may require.

Provisions to extend to canal lands.

SECT. 247. All the provisions of this article for the protection and safety of lands mortgaged to the state, shall apply to the lands granted or purchased for the construction or use of canals or other public works belonging to the state; and the powers conferred and the duties imposed upon the auditor of public accounts shall, in all cases to which this section is applicable, be conferred upon and required of the respective commissioners or agents superintending such canals or other public works.

ARTICLE XVI.

Of the canals, railroads, and turnpike roads belonging to the state in whole or in part.

SECTION

248. Public works designated: 1. Wabash and Erie canal. 2. Central canal. 3. Wabash and Ohio canal. 4. New Albany and Vincennes road. 5. Jeffersonville and Lafayette road. 6. Wabash rapids. 7. Erie and Michigan canal. 8. White Water canal. 9. Madison and Indianapolis railroad.
249. Wabash and Erie canal divided.
250. Portion west of Lafayette how superintended.
251. Portion east of Lafayette, how superintended.
252. New Albany and Vincennes road, how superintended.
253. Other public works, how superintended.

SECTION

254. Duties and compensation of agents appointed therefor.
255. State interest in company works, how superintended.
256. Repairs of certain public works, how made.
257. Auditor to prescribe manner of collecting and accounting for tolls, &c.
258. Penalty for obstructing or injuring railroad.
259. A bell to be procured and rung on railroads.
260. Signboards to be placed thereon.
261. Penalty for neglect.
262. Penalty for injuring bridge, &c.,
263. Expenses, how paid.
264. Sites for water power, how obtained.

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SECTION
265. Water power, how leased — land must belong to the state.
266. Conditions of the lease.
267. Conditions on which central canal may be surrendered to company.
268. A certain act for the surrender of the public works continued in force.
269. A certain act for the completion of the Wabash and Erie canal continued in force.

Public works designated.

SECT. 248. The public works heretofore constructed or now in progress of construction by the state, shall be known and designated as follows:

Wabash and Erie canal.

1. The navigable communication connecting the waters of Lake Erie with those of the Wabash river, and all the side-cuts, feeders, and other works belonging to the state connected therewith, by the name of the "Wabash and Erie canal."

Central canal.

2. That commencing on the Wabash and Erie canal and extending along the White river to its junction with the Newberry feeder, and the works belonging thereto, as the "Central canal."

Wabash and Ohio canal.

3. That commencing at Terre Haute, and heretofore known as the Cross-cut canal, together with the southern division of what has been heretofore known as the Central canal, from the Newberry feeder to Evansville, and the works belonging thereto, by the name of the "Wabash and Ohio canal."

New Albany and Vincennes road.

4. The McAdamized road from New Albany to Vincennes, by the name of the "New Albany and Vincennes McAdam road."

Jeffersonville and Lafayette road.

5. The McAdamized road from Jeffersonville to Lafayette by the name of the "Jeffersonville and Lafayette McAdam road."

Wabash rapids.

6. The improvements contemplated at the rapids of the Wabash river, by the name of the "Improvements of the Wabash rapids."

Erie and Michigan canal.

7. The canal commencing at Lake Michigan and terminating on the Wabash and Erie canal, and the works belonging thereto, by the name of the "Erie and Michigan canal."

White Water canal.

8. The canal commencing at Lawrenceburgh on the Ohio river, and extending to Nettle creek on the White Water river, and the works belonging thereto, by the name of the "White Water canal."

Madison and Indianapolis railroad.

9. The railroad commencing at Madison on the Ohio river, and extending to Indianapolis, and the works belonging thereto, by the name of the "Madison and Indianapolis railroad."

Wabash and Erie canal divided.

SECT. 249. The Wabash and Erie canal shall, for purposes of superintendence and construction, be divided at the point where the same leaves the lower or western line of the town of Lafayette; and all of said canal above that point shall be known as the "Wabash and Erie canal east of Lafayette," and all below as the "Wabash and Erie canal west of Lafayette."

Superintendence of Wabash and Erie canal west of Lafayette

SECT. 250. The general superintendence of the Wabash and Erie canal west of Lafayette, shall continue to be vested in the present commissioner and his successors duly elected,

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whose duties, term of service, and compensation, shall continue the same as provided in the act entitled "An act for the completion of the Wabash and Erie canal, from the mouth of Tippecanoe river to Terre Haute," approved January 1st, 1842.

Superintendence of Wabash and Erie canal east of Lafayette.

SECT. 251. The general superintendence of the Wabash and Erie canal east of Lafayette, and the Erie and Michigan canal, shall continue to be vested in the present commissioner and his successors duly elected, whose duties, term of service, and compensation, shall continue the same as provided in the act entitled "An act to provide for the continuance of the construction of all or any part of the public works of this state by private companies, and for the abolishing of the board of internal improvements, and the offices of fund commissioner and chief engineer," approved January 28th, 1842, except as herein changed or modified.

Superintendence of New Albany and Vincennes road.

SECT. 252. The general superintendence of the New Albany and Vincennes McAdamized road, shall continue to be vested in the present agent and his successors duly elected, whose duty, term of service, and compensation, shall continue the same as provided in the act recited in the last preceding section, except as herein changed or modified.

Superintendence of other works.

SECT. 253. The general superintendence of the public works not mentioned in the last three preceding sections, and yet belonging to the state, shall be vested in the secretary, auditor, and treasurer of state, who, from time to time, as occasion may require, shall appoint an agent or agents to take charge of one or more of such public works, or any part or portion thereof.

Who to appoint agents.

Duties and compensation.

SECT. 254. The duties and compensation of agents so appointed shall continue the same as provided in the seventy-ninth section of the act referred to in the two hundred and fifty-first section of this chapter, except as hereinafter provided.

State interest in co. works.

SECT. 255. The said secretary, auditor, and treasurer of state, shall also possess the general charge and superintendence of all interest which the state shall have, or may hereafter acquire, in any of the public works, now or hereafter to be surrendered to companies, as provided in the act referred to in section two hundred and fifty-one, and shall, by agent or otherwise, vote for all stock held by the state in such companies.

Repairs, how to be made.

SECT. 256. If at any time any dam, lock, or other structure, on any of the public works specified in the two hundred and fifty-third section, shall be in danger of sustaining injury, to the loss and damage of the state, said secretary, auditor, and treasurer of state may cause the necessary expenditure to be made for the preservation thereof.

Auditor to prescribe manner of collecting and accounting for tolls, &c.

SECT. 257. The auditor of state shall have power to prescribe all needful rules to the collectors of tolls and water rents, touching their duties, and the manner of their reporting and accounting for the money by them received.

Penalty for obstructing or injuring railroad.

SECT. 258. If any person shall wilfully and maliciously obstruct the passing of any carriage on any railroad, or in any

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way injure such road or any thing appertaining thereto, or any materials or implements for the construction or use thereof, such person, and all who shall be aiding or abetting in such trespass, shall forfeit to the use of the corporation, for every such offence, treble the amount of any damages which shall appear on the trial to have been sustained thereby; and may further be punished by a fine not exceeding one thousand dollars, or may be imprisoned for a term not exceeding one year.

Bell to be procured and rung.

SECT. 259. Every railroad corporation shall cause a bell of at least thirty-five pounds in weight, to be placed on each locomotive engine passing upon their road; and the said bell shall be rung at the distance of at least eighty rods from the place where said railroad crosses any turnpike, highway, or townway, upon the same level with the railroad, and shall be kept ringing until the engine shall have crossed such turnpike or way.

Sign boards to be placed.

SECT. 260. Every railroad corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained, across each turnpike, highway, or townway, where it is crossed by the railroad, upon the same level therewith, the said posts and boards to be of such height as shall be easily seen by travellers, without obstructing the travel; and on each side of said boards, the following inscription shall be painted in capital letters of at least the size of nine inches each—RAILROAD CROSSING—LOOK OUT FOR THE ENGINE!

Penalty for neglect.

SECT. 261. If any railroad corporation shall unreasonably neglect or refuse to comply with the regulations contained in the two preceding sections, they shall forfeit for every such neglect or refusal, a sum not exceeding one thousand dollars; and if any agent of any such company shall neglect or refuse to comply with the regulations aforesaid, he shall, for every such neglect or refusal, forfeit a sum not exceeding one hundred dollars; and the railroad company shall also be liable for all damages sustained by any person, by reason of such neglect of any of their agents, to be recovered in an action on the case.

Penalty for injury to bridge, &c.

SECT. 262. Every person who shall wilfully and maliciously break down, injure, remove, or destroy, any public or toll bridge, or railroad, or any turnpike gate, or any lock, culvert, or embankment of any canal, or shall wilfully and maliciously make any aperture, or breach, in any such embankment of any canal, railroad, or turnpike, with intent to destroy or injure the same, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than two years.

Expenses, how paid.

SECT. 263. All expenditures incurred under and by virtue of the two hundred fifty-third, two hundred fifty-fifth, two hundred fifty-sixth, and two hundred and sixty-fourth sections of this chapter shall be paid out of the internal improvement fund.

Sites for water power, how obtained.

SECT. 264. At any lock, dam, or other point, on any canal of this state, which has been or may hereafter be located, where there will be surplus of water applicable to hydraulic purposes, and where the interests of the state and the public convenience

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may, in the opinion of the secretary, auditor, and treasurer of state, require the application of such water power to machinery, it shall be the duty of the secretary, auditor, and treasurer of state, so soon as the same is permanently located, to ascertain the particular portion of ground required for the use of such water power at each point; whereupon, the secretary, auditor, and treasurer of state, shall, on behalf of the state, propose to the owner or owners of such ground, or their agent, to purchase the same for the use of the state, at such price as the secretary, auditor, and treasurer may deem reasonable, estimating the ground at its full value for ordinary uses, independent of any additional value which may be given to it by the use of the water power on it, and without considering the benefits of the canal conferred upon other property, as an offset to the value of the lot in question; and if the owner or owners shall refuse to sell such ground to the state, upon fair terms, the secretary, auditor, and treasurer, shall thereupon proceed to appropriate such lot of ground to the state, for the use of the public as aforesaid; and, in that event, the value of said lot of ground shall be determined by three disinterested appraisers, appointed by said secretary, auditor, and treasurer of state, subject, however, to the appeal of either party from the award of such appraisers to the circuit court, in the manner prescribed by the seventeenth section of "An act to provide for a general system of internal improvement, approved January 27th, 1836;" and the payment of the award thus made by the secretary, auditor and treasurer of state, shall vest in the state of Indiana the title to said lot of ground, for the purposes aforesaid; and in case the person entitled to said payment will not receive the same, it shall be deposited in the clerk's office of the county in which the land lies, subject to his order, which shall be considered a payment.

Water power, how leased.

SECT. 265. Whenever, in the opinion of the secretary, auditor, and treasurer of state, there shall or may be surplus water, over and above the quantity required for navigation, in any of the canals or feeders, or at any dam erected at the expense of the state, and belonging thereto, and where the water which shall or can be passed around any lock from one level to another, without injuring the navigation, may be sufficient to propel hydraulic machinery, the secretary, auditor, and treasurer are hereby authorized to cause such surplus water, with such portions of ground belonging to the state as may be necessary to its use, to be leased to the highest bidder, for hydraulic purposes, under such conditions and restrictions as they may deem necessary and proper for the interest of the state; but no water power shall be leased unless the ground on which it is proposed to be used shall be the property of the state.

Land to belong to the state.

Conditions of lease.

SECT. 266. Every lease granted, or conveyance of water power made, in pursuance of the last preceding section, shall contain a reservation or condition that the state by its authorized agent, may at any time reserve the right to use the water,

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or any part thereof, whenever it may be deemed necessary for the purposes of navigation, and whenever its use for hydraulic purposes shall be found in any manner to interfere with the convenient navigation of the canal, near which the same may be situated, and whenever such privilege may be resumed, in whole or in part, the sum paid therefor, or such portion thereof as may, upon equitable principles, be determined upon, agreeably to the stipulations of the lease or deed of conveyance aforesaid, shall be refunded to the purchaser or lessee, his or their heirs or assigns.

Conditions on surrender of Central canal.

SECT. 267. No surrender of the Central canal, or any portion thereof, to any person or company, on account of having completed ten miles of the same, under the provisions of the act recited in the two hundred and fifty-first section, shall be made, unless the ten miles so completed shall be continuous, and shall be wholly north or wholly south of the city of Indianapolis.

Certain act continued in force.

SECT. 268. The act entitled, "An act to provide for the continuance of the construction of all or any part of the public works of this state by private companies, and for the abolishing of the board of internal improvements, and the offices of fund commissioner and chief engineer," approved January 28th, 1842, and all the provisions therein contained, except as in this chapter modified or changed, shall continue in full force.

Same.

SECT. 269. The act entitled, "An act for the completion of the Wabash and Erie canal from the mouth of Tippecanoe river to Terre Haute," approved January 1st, 1842, and all the provisions therein contained, except as in this chapter modified or changed, shall continue in full force.

ARTICLE XVII.

Of the preservation of the canals of this state, of the collection of tolls, and of the transportation thereon.

SECTION

270. Penalty for injuring canal.
271. Penalty for interfering with gates, weirs, &c.
272. Penalty for riding or driving on banks of canal.
273. Penalty for obstructing navigation, &c. of canal.
274. Same.
275. Boats, &c. obstructing canal, to be seized, and how disposed of.
276. When owner claiming and paying costs may have the same.
277. Proceeds of sale of property seized, how accounted for.

SECTION

278. When to be paid to the owner.
279. No wharf, &c. to be constructed or water drawn from canal without permission; penalty therefor; same to be removed.
280. Bridges, how to be built, dimensions, &c.
281. Shape of the bow of boats prescribed.
282. Projecting spikes, bolts, &c. on boats, prohibited.
283. A guard under stern post and keel required.
284. A sufficient tow line required.
285. Iron setting poles prohibited.

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SECTION
286. Speed limited.
287. Boats overtaken by others, how to turn.
288. Boats meeting each other, how to turn.
289. Rules for passing locks.
290. Same subject.
291. Same subject.
292. Same subject.
293. Same subject.
294. Same subject.
295. Penalty for violation of any of the fourteen preceding sections.
296. Boat shall be liable for such penalty, and may be attached therefor.
297. Penalty for throwing obstructions into canal.
298. Penalty for injuring gate, &c. in navigating canal.
299. Commissioner to establish rates of toll.
300. Commissioner to appoint collectors —establish rules for their government, and fix their compensation.
301. Collector to make oath and give bond.
302. Accounts to be kept by collector—abstracts thereof, when to be furnished and payments made.
303. Moneys, how collected from delinquent collector; no stay or appraisement allowed.
304. Sheriff's duty therein, and his fees.
305. Penalty on collector for using or loaning money.
306. Certificate of registry of boat to be delivered to collector.
307. How when master of the boat is changed, the owners being non-residents.
308. Collector shall give a receipt therefor —make record—name, how to be changed.
309. Copies of registry to be sent to other collectors, who shall record them.
310. Change of registry, how made.
311. No clearance allowed until boat is registered.
312. Certificate of registry shall be evidence of ownership—to what extent and purpose.
313. Penalty for changing the name of boat, or reporting a wrong name.
314. On change of name, new certificate of registry to be obtained.
315. Name to be painted on boat.
316. A clearance required for each voyage.

SECTION
317. What collector shall issue clearance.
318. Same subject.
319. Tolls to be paid before clearance issued.
320. Master shall exhibit his bill of lading —its contents.
321. Same to be exhibited to whom.
322. Tolls on property received on board during a voyage, where to be paid.
323. Bill of lading for same, to whom to be exhibited.
324. Penalty for violating any of the eight last preceding sections.
325. Bill of lading, when and to whom exhibited, and tolls paid, when no collector's office at place of commencement, progress, or termination of voyage; penalty for neglect.
326. Penalty on master for omitting to exhibit bill of lading, to pay tolls, or who shall deliver article at improper place.
327. Penalty for making a false bill of lading.
328. Same.
329. Oath may be required to bill of lading.
330. Collector may administer oaths.
331. Error in bill of lading, how corrected; penalty for neglect.
332 Each boat to have a clearance, and boat and cargo to be for same place.
333. Boat not to proceed or to unload until clearance is delivered to collector.
334. If no collector, to whom it shall be delivered.
335. Penalty for omission to deliver clearance.
336. Copies of clearances to be given by collector—his fees therefor.
337. Validity and effect of same.
338. When master and collector do not agree, articles to be weighed, &c.; expense, how paid.
339. Master shall be liable for tolls, &c.; boat and cargo may be detained therefor.
340. Collector may sell portions thereof for tolls, &c.; notice of sale.
341. Surplus, to whom paid.
342. List of passengers, how made; to be delivered to collector; who to examine its correctness.
343. Oath of master required thereto; tolls thereon, where to be paid.

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SECTION
344. Penalty for neglect to make oath or pay tolls.
345. Penalty for neglect to deliver list of passengers.
346. Penalty for making an incorrect list.
347. Who considered a passenger.
348. Tolls to be paid before clearance; no new clearance until all tolls are paid.
349. Permit, when to be issued.
350. Tolls, when to be paid at termination of voyage; permit to be obtained before landing; penalty for omission; masters and owners liable therefor.
351. Collector shall record statement of cargo; to be signed and sworn to by master.
352. Every cargo to be likewise recorded by next collector, and signed and sworn to by master.
353. Penalty on master for refusal to comply as above, or for signing a false statement.
354. List of cargo to be endorsed on clearance.
355. Bill of lading, &c., to be presented to collector on arrival.
356. Boat not to proceed until bills of lading, &c., are so presented, and payment made.
357. Penalty for noncompliance.
358. Cargo not to be landed without permit except in cases of emergency. —Penalty.
359. Boats navigating without authority, to be seized.
360. Clearance shall be exhibited to first lock tender or superintendent or boat detained.
361. Penalty for violating two preceding sections.
362. United States' property to pass free.
363. Collector to examine master on oath as to claim of exemption.
364. Owners and boat liable for all penalties, forfeitures, and tolls.
365. Meaning of the terms "float" and "master."
266. Master, owner, and boat liable for certain penalties, forfeitures, and damages.—Boat may be detained therefor.
367. On process therefor, boat and horses may be seized.
SECTION
368. Same, when to be released—when to be sold.
369. Suit for penalties, &c.—who may institute and against whom.
370. Person prosecuting to be liable for damages, unless there was probable cause.
371. Appeal allowed.
372. Commissioner, &c., may sue—If cause is continued, depositions of attending witnesses may be taken.
373. Money received for fines, &c., how accounted for.
374. Penalty for neglecting to account therefor.
375. Boats not to lie so as to impede navigation.
376. Heavily laden boats, unable to navigate, not allowed to obstruct others.
377. Penalty for failing to observe two preceding sections.
378. Passenger boats entitled to preference in passing locks.
379. Penalty for neglect of preceding section.
380. Certain boats to have fenders.
381. Penalty for failure.
382. Clearance to be refused if boat is unprovided with fenders—also unprovided boats may be detained.
383. Bow line required. — Penalty for omission.
384. Who to determine sufficiency thereof. For want thereof, boat may be detained.
385. Boats not to be named alike.
386. Penalty therefor.
387. No litter to be deposited in canal.
388. Penalty therefor.
389. Master, owners, and boat liable therefor, and boat may be detained until payment.
390. Horses not to pass towing bridge faster than a walk—not to pass over sides of canal—penalty therefor.
391. Lights to be carried at night—Penalty for omission.
392. Fire not to be carried over a bridge, &c.—Penalty therefor.
393. Copies of this article authorized to be printed.
394. Repeal of former laws.
395. This article, when to be in force.

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ARTICLE 17.

Penalty for injuring canal.

SECT. 270. If any person or persons shall wilfully and maliciously break, throw down, injure, or destroy, any embankment, waste weir, lock, aqueduct, culvert, lock-gate, or bridge, on any canal owned by the state, such person or persons, for every such offence, shall, upon conviction thereof by presentment or indictment before the proper tribunal, be sentenced to imprisonment at hard labor in the state prison for any length of time not less than six months, nor more than two years; and shall further be liable to pay all damages sustained by the state in consequence of such offence.

Penalty for obstructing or interfering with gates, weirs, &c.

SECT. 271. If any person or persons shall wantonly or unnecessarily open or shut, or cause to be opened or shut, any lock-gate, or any paddle gate, or culvert gate thereof, or any waste gate, or drive any spike, nail, pin, or wedge, into any of said gates, or shall in any manner interfere with the free use of said gates, or shall place upon or take from the tumble or regulating weir of any lock, any plank, or other device or fixture for the purpose of increasing or diminishing the flow of water over such tumble or regulating weir, or for any other purpose, such person or persons, for every such offence, shall forfeit and pay to the state one hundred dollars, together with all damages consequent upon such offence, recoverable by action of debt, in the name of the state of Indiana, before any court having competent jurisdiction thereof.

Penalty for riding, &c. on banks of canal.

SECT. 272. Every person who shall lead, ride, or drive, or cause to be led, ridden, or driven, any horse, ox, or other animal, drawing after it any wagon, cart, dray, or other carriage, upon the towing path or berm bank of any canal of this state, shall, for every such offence, forfeit and pay to the state the sum of fifteen dollars, recoverable by action of debt as aforesaid.

Penalty for obstructing navigation, &c.

SECT. 273. If any person shall obstruct the navigation of any of the canals of this state, by sinking therein any stone, timber, vessel, or other thing, or by placing any obstruction on the towing-path thereof, such person, for every such offence, upon conviction thereof, shall forfeit and pay to the state the sum of twenty-five dollars, together with the expense of removing such obstruction, recoverable by action of debt as aforesaid.

Same.

SECT. 274. If any boat or other float shall be so moored on any of the canals as to obstruct the navigation thereof, or if any person or persons shall obstruct the passage of boats on any canal, by improperly stopping, loading, unloading, or otherwise misconducting any boat or other craft, and shall refuse or neglect to remove such obstruction immediately on being required to do so, by any officer on the canal, or by any person incommoded by such obstruction, the boatman or person who caused the obstruction, shall forfeit and pay to the state the sum of twenty-five dollars, recoverable by action of debt as aforesaid.

Boats, &c. obstructing, to be

SECT. 275. It shall be the duty of every engineer, collector, superintendent, or agent, employed on any of the canals, to

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seized, and how disposed of.

seize all boats, rafts, logs, and every floating or sunken thing which may be found in any of said canals, and all articles found on the towing path thereof, not under the charge of any person, and to sell the same at public vendue, after giving ten days previous notice thereof in writing, posted up in two public places near the place where such boat or other articles or things may have been found.

Owner claiming and paying costs, may have the same.

SECT. 276. If the owner of any article so seized shall appear, and claim the same before the time of sale, and pay the costs of seizure and expense of removal, such sale shall not take place.

Proceeds of sale, how accounted for.

SECT. 277. If the officer making such sale shall not be a collector, the avails of such sale shall be accounted for by him, within thirty days, to the nearest collector, who shall account for the same as for tolls collected; and if the sale be made by a collector, he shall account for the avails thereof in the same manner.

When to be paid to owner.

SECT. 278. After any such sale shall have been made, and the proceeds thereof shall be in the hands of the collector or officer making such sale, such collector or other officer may, on the application of the owner, and due proof of ownership, pay over such proceeds to such owner, after deducting all penalties, forfeitures, costs, and reasonable expenses chargeable thereon.

No wharf, &c. to be constructed or water drawn from canal, except, &c

SECT. 279. No person shall construct any wharf, basin, or watering place, on any canal of this state, or make any device or arrangement which will draw therefrom any water, without first obtaining the consent, in writing, of the acting commissioner, or principal engineer of such canal; and if any person shall violate this provision, by commencing the construction of any such device without permission, as before provided, or shall refuse to follow the directions of the acting commissioner or engineer, which may be given in regard to the location, size, and form of such wharf, basin, watering place, or other device,

Penalty.

as aforesaid, such person, for every such offence, shall forfeit and pay to the state the sum of fifty dollars, recoverable by action of debt as aforesaid; and the said acting commissioner, or engineer, or any superintendent, or agent of the state, is hereby

Same to be removed.

authorized to remove and destroy every such wharf, watering place, or other such device as aforesaid, at the expense of the persons thus attempting without permission to build it.

Bridges, how built, dimensions, &c.

SECT. 280. Any individual may build a bridge across any canal of this state: provided, the centre span of such bridge shall conform to the following specifications, to-wit: the underside of the bridge timbers shall be at least ten feet above the top water line of the canal when the water is at its greatest height, and the string pieces shall be twelve inches deep at the ends, and twenty inches deep in the centre, to prevent them from swagging down towards the canal; the trussel or abutment which stands in the canal, shall be so placed as to leave a width of thirty-one feet for the passage of boats between said trussel or abutment, and the towing path of the canal, measuring at

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the level of four feet above the bottom of the canal; the trussel or abutment which stands on the towing path shall be so placed as to have six feet clear space between said trussel or abutment and the edge of the water when the canal is full, for a towing path; which towing path shall be so excavated down to a level of six inches above top water line, as to allow the horse and driver to pass under the bridge; and from the end of said trussel or abutment the towing path shall be sloped at the rate of one to six, to the height of the adjoining tow path; and to prevent the towing path from being undermined and rendered impassable by the action of the water route, a wharf shall be constructed in front, formed of two sticks of timber forty feet long, secured by square ties. The measurements and levelling herein required, to be made by the engineer having charge of the line, who shall attend to this duty whenever requested to do so by any individual; and if any person shall commence the construction of any bridge which does not conform in every respect to the specifications herein given, such person shall, upon conviction thereof before any court having competent jurisdiction, forfeit and pay to the state the sum of fifty dollars, recoverable by action of debt in the name of the state. ARTICLE 17.

Shape of bow of boat.

SECT. 281. No boat or float, unless it have a firm and permanent bow, at least as sharp or acute as a semicircle, shall navigate or float on any canal of this state; and every time any boat or other float without such bow shall move one mile, or any greater distance, along any of the canals of this state, it shall be considered a distinct offence.

Projecting spikes, bolts, &c., on boats, prohibited.

SECT. 282. It shall not be lawful for any boat having any spike, bolt, nail, hook, or any plank, board, or pin, projecting from the side, end, or bottom thereof, in such manner as to be liable to injure any other boat, or towing line thereof, or any work or mechanical structure belonging to the canal, to navigate any of the canals of this state.

Guard under sternpost, and keel required.

SECT. 283. Every boat running upon any canal of this state, shall have a guard or plate of iron, or some other permanent device, firmly attached, so as to cover and secure the opening between the keel or sternpost and the rudder, thereby effectually preventing the towline of any other boat from entering said opening.

Tow line.

SECT. 284. No boat shall be permitted to navigate any of the canals of this state, without a good and sufficient towline, which shall be approved of by the engineer or superintendent, and each mile that such boat or float shall proceed in violation of this section, shall be considered a distinct offence.

Iron setting poles prohibited

SECT. 285. It shall not be lawful for any setting pole or shaft, pointed with iron, steel, or other metal, to be used in the navigation or management of any boat or other float on any of the canals of this state.

Speed limited.

SECT. 286. No float shall move on any of the canals of this state with a velocity exceeding four miles an hour.

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PART 1.

Boats, when overtaken by others, how to turn.

SECT. 287. When a boat or other float shall be overtaken by another boat or float, it shall be the duty of the master or manager of the former, to turn from the towing path and afford the latter every possible facility for passing, and to stop, if it should become necessary, until the boat or float last mentioned shall have passed by.

Boats, when passing other, how to turn.

SECT. 288. When any boat or other float, in passing on any of the canals, shall meet any other float passing in an opposite direction, it shall be the duty of the master of each to turn to the right hand, so as to be wholly on the right side of the centre of the canal; and the horses or other moving power of the boat, which, in turning to the right as aforesaid, shall turn from the towing path, shall be stopped so as to allow the moving power of the other, and the float itself, to pass freely over the towing rope of the float so turned from the towing path.

Passing locks, rules for the management thereof.

SECT. 289. Any float moving on any of the canals, which shall have arrived within one hundred yards of any lock in which the water is on the same level with such float, shall be permitted to pass such lock before any float not on the same level.

Same.

SECT. 290. No person shall attempt to pass any float into any lock or out of any lock, until the main gates at the head or foot of said lock, as the case may be, between which gates such float shall be about to pass, shall first be entirely opened into their respective recesses, nor until all paddle and culvert gates of such lock shall be closed.

Same.

SECT. 291. Neither of the main gates at the head or at the foot of any lock, shall be closed or allowed to close of its own accord, while either of the paddle or culvert gates at the opposite end of said lock shall remain open.

Same.

SECT. 292. When any float shall pass out of any lock, the main gates of such lock through or between which such float shall have passed out, shall be left entirely open and completely within their respective recesses, and all the paddle and culvert gates of such lock shall be left closed: provided, however, that where the acting commissioner, engineer, or superintendent, having charge of that part of the canal in which such lock is situated, shall direct any paddle, culvert, or other gate to be left open for the purpose of passing water through the same, such direction shall be complied with and obeyed by all lock keepers, masters of floats, boatmen, and all other persons concerned in navigating such canal.

Same.

SECT. 293. In no case shall the stern or bow of any boat or or float approaching or being about to enter, or having entered any lock, be permitted to run against, or strike the head, walls, or either of the gates of such lock, wilfully or negligently.

Same.

SECT. 294. No lock gate, culvert gate, or paddle gate, shall be closed, nor be permitted by any person using the lock to close itself, with such violence as to injure, or be liable to injure itself.

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ARTICLE 17.

Penalty for violation of the fourteen preceding sections

SECT. 295. Every master or owner of any boat or other float, or any other person having charge of such float, who shall violate any of the provisions contained in the fourteen sections next preceding this section, or who shall permit any boatman, or other person assisting in the navigation or management of such float, to violate any of the said sections, or any provision thereof, shall, for every such violation, forfeit and pay a sum not less than five, nor more than twenty-five dollars, recoverable by action of debt, in the name of the state of Indiana, before any court having competent jurisdiction.

Boat liable for penalty.

SECT. 296. Every penalty and forfeiture imposed by this act, for which any master, owner, boatman, or other person may be liable, and which is herein made recoverable by action of debt in the name of the state, shall be chargeable on such boat or float; and when any suit shall be instituted for any such forfeiture, the officer issuing such process may cause such boat or float, together with the horses and furniture belonging thereto, to be attached and detained, until such suit shall be determined.

And may be attached.

Penalty for throwing obstructions into canal.

SECT. 297. Any person who shall wilfully throw into any of the canals any saw log or other timber, or other thing which may obstruct the navigation, shall, on conviction thereof, forfeit the sum of ten dollars, recoverable by action of debt, in the name of the state.

Penalty for injuring gate, &c.

SECT. 298. If any person, in navigating, or assisting in the managing of any boat or float, on any of the canals, shall, either through design or negligence, in the navigation thereof, injure any lock gate, waste gate, guard gate, aqueduct, bridge, or other mechanical structure, such person shall forfeit and pay, upon conviction thereof, any sum not less than five, nor more than twenty dollars; and, moreover, be liable for all damages caused by such mismanagement or negligence, recoverable by action of debt in the name of the state.

Commissioner to establish rates of toll.

SECT. 299. The commissioner of the Wabash and Erie canal east of Lafayette, is hereby authorized and empowered to establish such rate of tolls as he may deem reasonable and most consistent with the public interest, to be collected on said canal, and to make such changes and amendments in said rates from time to time as the public good may seem to require, or as may be directed by law.

Commissioner to appoint collectors.

SECT. 300. The said commissioner shall appoint as many collectors of tolls on said canal, and at such points on the same, as he may deem necessary to secure the faithful and punctual collection of tolls, with the least possible expense to the state, who shall hold their offices during the pleasure of said commissioner; and the said commissioner is hereby fully authorized to adopt such rules and regulations for the government of the collectors in the performance of their duties, as may be necessary to carry out the objects herein contemplated; and said commissioner shall allow to each collector such annual salary for his services as he may deem reasonable in each case, with reference

To establish rules.

Fix compensation.

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to the portion of time required for the performance of the duties of his office.

Collector to make oath and give bond.

SECT. 301. Each collector of tolls, previous to entering upon his duties, shall take an oath, and enter into bond to the state of Indiana, in such sum, as the commissioner of said canal may require, and with such sureties as he may approve, for the faithful performance of his duties, and for the faithful accounting for all moneys belonging to the state that may come into his hands, either as tolls, water rents, fines, or otherwise.

Accounts to be kept by collector.

SECT. 302. Each collector of tolls shall keep a regular account of the weight or quantity of any and all articles cleared from his office, or passing on the canal, together with the tolls received thereon, and shall furnish to the auditor of state and the

Abstracts.

commissioner of the Wabash and Erie canal, abstracts of such accounts from his books, at least once in every sixty days, and as much oftener as said auditor may require, and at the same time deposite the amount of money received for tolls, water rents, fines, or otherwise, in such bank, or with such individual or

Payments.

officer as said auditor may direct, deducting therefrom the amount due him for his services, and for such items of incidental expense as the commissioner may approve.

Moneys, how collected from collector.

SECT. 303. If any collector of tolls shall neglect to deposit the moneys in his hands belonging to the state according to law and the directions of the auditor of state, which from the abstracts of returns made to the auditor he shall appear to have collected for tolls, water rents, fines, or otherwise, the auditor may issue a warrant, directed to the sheriff of any county where such collector or any of his sureties may be found, thereby commanding such sheriff to cause the amount of such moneys in the hands of such collector, to be made and levied of the goods and chattels, lands and tenements, of such collector; and in case the same shall not be sufficient, then of the goods and chattels, lands and tenements, of the sureties of such collector, by selling the same to the highest bidder, and in no case

No stay or appraisement.

shall the benefits of the stay law, or appraisement law, be extended to such collector or his sureties; and the said sheriff shall return the money so made, together with the warrant, and his doings thereon, to the auditor of state, within sixty days from the date thereof.

Sheriff's duty, and his fees.

SECT. 304. The sheriff to whom such warrant shall be directed, shall immediately cause the same to be executed, and may demand and collect the like fees for executing the same as are allowed by law for the service of executions issuing out of the circuit court.

Penalty for using or loaning money.

SECT. 305. If any collector of canal tolls shall use for his own benefit, or lend to any person, any of the moneys belonging to the state that may come into his hands by virtue of his said office, he shall be deemed guilty of a misdemeanor; and upon conviction thereof before any court of competent jurisdiction, shall forfeit to the state a sum equal to double the amount

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ARTICLE 17.

so used or loaned, and moreover be confined in the county jail for a period not exceeding ninety days, at the discretion of the court.

Certificate of registry to be delivered to collector.

SECT. 306. The owner or owners of every boat navigating any of the canals, shall subscribe and deliver to the collector of whom the first clearance for such boat shall be demanded, a certificate, to be entitled a "certificate of registry," containing the name or names of such owner or owners, and his or their respective places of abode, and also the name of the boat, and place where it is owned; if the owner or owners reside out of this state, the certificate of registry shall be signed and delivered by the master of the boat, as the owner thereof.

When master of boat is changed, owners being non-resident.

SECT. 307. If the master of any boat, the owners of which reside out of the state, shall be changed, after he shall have delivered such certificate, the new master shall sign and deliver a proper certificate of registry to the collector, of whom he shall first require a clearance.

Collector to give a receipt therefor.

SECT. 308. Every collector receiving a certificate of registry, shall sign and deliver to the person of whom he shall receive the same as aforesaid, a written receipt therefor, and shall without delay record the same in a book to be provided and kept by him for that purpose, which book of registry shall be open to inspection during the usual office hours; and the name of no registered boat shall be changed without the written order of the collector in whose office the same is registered.

Make record.

Name, how to be changed.

Copies to be sent to other collectors.

SECT. 309. Each collector shall, within one month from the time any boat shall have been registered, or change made in the registry in his office, transmit to each of the other collectors on the same canal, a certified copy of the register of boats in his office, and of the several changes made therein, which copy shall be immediately recorded by the collector receiving it, in the same manner as is prescribed in the preceding section for original certificates of registry.

And by them recorded.

Change of registry, how made.

SECT. 310. If any person residing within this state, claiming to be the owner of a registered boat by transfer from its former owners, shall produce to the collector in whose office the same shall have been originally registered; due proof of such transfer, and shall deliver to him a new certificate of registry, signed by himself, it shall be the duty of such collector to change the register of such boat so as to correspond with such new certificate.

No clearance until registry.

SECT. 311. No clearance shall be granted to any boat unless the collector of whom it is required shall have evidence that such boat is duly registered; or if it be not registered, until the master thereof shall have delivered to such collector a proper certificate of registry, or exhibited to him the receipt of some other collector for such certificate.

Certificate evidence of ownership, to what extent, and purpose.

SECT. 312. The persons specified in the certificate of registry of any boat as the owners thereof, shall be deemed in law the true owners thereof, for all the purposes of enforcing the

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collection of tolls, and the execution of the laws, rules, and regulations for the navigation or maintenance of the canals.

Penalty for changing name of boat, or reporting by wrong name.

SECT. 313. Every owner of a boat who shall change its name, or the name of the place at which it is owned, from that stated in the certificate of registry then in force, without the written order of the collector in whose office the same shall have been originally registered, (which written order the collector is required to grant, on the application of any owner for that purpose,) and every master who shall enter or report such boat at any collector's office by a different name from that so stated, shall, for every such offence, forfeit the sum of twenty dollars.

On change of name, new certificate of registry to be obtained.

SECT. 314. No boat, the name of which shall have been changed in the manner prescribed in the preceding section, shall receive a clearance, or be permitted to pass on any of the canals of this state, till a new certificate of registry shall be presented to the collector who shall have granted the order to change the name of said boat; which certificate shall contain the former as well as the present name of said boat, and shall be signed in like manner as prescribed in the three hundred and sixth section of this chapter.

Name to be painted on boat

SECT. 315. No boat shall receive a clearance, or be permitted to pass on any of the canals, unless such boat shall have the name thereof, and the name of the place where it is owned, corresponding with its certificate of registry then in force, painted in some conspicuous and permanent part of the outside of the boat, in letters of at least four inches in height.

Clearance to be obtained for each voyage.

SECT. 316. No boat or float shall be permitted to pass on any of the canals, unless the master thereof shall first have obtained a clearance therefor, for each voyage of such boat or float, from the proper collector of tolls on such canals, except in the cases hereinafter particularly specified.

When collector to issue clearance.

SECT. 317. Clearances for every voyage shall be required of and issued by the collector whose office shall be kept nearest to the place at which the voyage shall be commenced, provided that there be any collector's office within one mile of such place.

Same.

SECT. 318. If there be no collector's office within one mile of the place whence the voyage is commenced, the clearance for such voyage shall be required of the collector at whose office the boat shall first arrive in the course of the voyage; and such boat shall be permitted to proceed from the place where the voyage was commenced to such collector's office, and no further, without a clearance.

Tolls to be paid before clearance.

SECT. 319. The full amount of tolls chargeable on any boat, and on each and every article of property which shall be on board thereof, or constitute any float, at the time such boat or float shall depart from the port or place in which there is a collector from whom a clearance is required, or that shall be taken on board within one mile of such port or place, shall be paid to

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such collector before he shall issue a clearance for such boat or float. ARTICLE 17.

SECT. 320. Every master of a boat or float, conveying property on any of the canals, shall exhibit to the several collectors hereinafter mentioned, a just and true account or bill of lading of such property, signed by the consigner thereof, and containing, first, the name of each place on the canal where any portion of such property was shipped, and the place for which it is intended to be cleared, specifying the portion shipped at each of such places, and the portion intended to be cleared to each place; second, a statement of the weight of all articles of such property on which toll is to be charged by weight, of the number of articles on which toll is to be charged by number, and of the feet of each article on which toll is to be charged by the foot; third, a specification of the weight or quantity of each article on which one rate of toll is to be charged, and which is to be transported to one place, separately from other articles on which a different rate of toll is charged, or which are to be transported to a different place. Master to exhibit bill of lading. Its contents.

SECT. 321. Every such account or bill of lading shall be exhibited, first, to every collector of whom a clearance shall be required; second, to every collector whose office shall be next in order in the course of the voyage to the place where the clearance shall have been granted; third, to every collector at a place where any portion of the cargo shall be unladen, or any additional cargo received; and if there be no collector at such place, to the collector whose office shall be next in order in the course of the voyage; fourth, to every other collector who shall demand such account or bill of lading to be exhibited. Such bill of lading to be exhibited, to whom.

SECT. 322. If any property shall be received on board of any boat or other float, for the purpose of being transported on any of the canals, during any voyage, after such boat or float shall have proceeded one mile from the place at which a clearance for the voyage was granted, an account or bill of lading thereof, conforming to all the requisitions herein before stated, shall be exhibited to the collector whose office shall be next in order, in the course of the voyage, to the place where such property was received on board, to whom the full amount of tolls chargeable on such property shall be paid; and such boat or float shall not be permitted to proceed on such voyage beyond the office at which the tolls on such property so received on board are payable, until the full amount of such tolls are paid. Tolls on property received on board during voyage, where paid.

SECT. 323. When any cargo shall be taken on board of any boat or float, after such boat or float shall have left the place where the clearance was granted, as specified in the preceding section, the account or bill of lading of such property shall be exhibited to the collector whose office shall be next in order, in the course of the voyage, to the office at which the tolls on such additional cargo are required to be paid, and to every other collector who shall demand it to be exhibited. Bill of lading for same, to whom exhibited.

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Penalty for violating eight preceding sections.

SECT. 324. Every person violating the provisions of any of the eight sections next preceding this section, shall forfeit and pay to the state the sum of twenty-five dollars.

Bill of lading, when and to whom exhibited, and tolls paid, when no collector's office at place of commencement, progress, or termination of voyage.

Penalty.

SECT. 325. If there be no collector's office within one mile of the place where a voyage on the canal shall be commenced, nor within one mile of the place where the same shall terminate, nor at any intermediate place, the master of the boat or other float shall, within ten days after the termination of such voyage, exhibit a true account thereof, or bill of the lading transported on board of such boat or float at any time during such voyage, to the collector whose office shall be nearest to the place where such voyage terminated, and shall pay to such collector the tolls due on such boat or float, and lading; and every master who shall neglect to exhibit such account and bill, and to pay such tolls, within the period above limited, shall, for every such offence, forfeit the sum of twenty-five dollars.

Penalty on master omitting to exhibit, deliver, or pay.

SECT. 326. Every master of a boat or other float, navigating any of the canals, who shall omit to exhibit or deliver a true bill of lading to any collector, or to pay the tolls thereon when required, or shall deliver any article mentioned in the bill of lading, at a place beyond that to which such article shall have been cleared, shall forfeit the sum of twenty-five dollars.

Penalty for false bill of lading.

SECT. 327. Every person who shall sign or deliver to any collector a false bill of lading, shall pay, on all property omitted in such false bill, to any collector who shall be satisfied of such omission, treble the established rates of toll chargeable thereon, for the whole distance such property is conveyed on the canal.

Same.

SECT. 328. Every person who shall knowingly sign or deliver a false bill of lading shall be deemed guilty of a misdemeanor; and, upon conviction thereof before any court of competent jurisdiction, shall be fined not less than three times the value of the property omitted or falsely stated in such bill.

Oath may be required.

SECT. 329. Every collector receiving a bill of lading may require the master exhibiting it to verify it by his oath, which such collector is authorized to administer.

Collectors may administer oaths.

SECT. 330. The collectors of tolls on the canals shall be, and they are hereby authorized to administer oaths in all cases wherein oaths may be required to be administered, in performing the duties required of them in their offices.

Error in bill of lading, how corrected.

SECT. 331. If, on unloading any boat or float, it shall be discovered that the cargo, in consequence of an unintentional error, exceeds the quantity stated in the bill or bills of lading, it shall be the duty of the master of such boat or float, immediately to report such overplus, and pay the lawful tolls thereon to the collector at the place where such error may be discovered, if there be any collector at such place, and if there be no collector at such place, to the next collector, at or near whose office the boat shall arrive, after the discovery of such error;

Penalty.

and any master of a boat or float who shall fail to comply with the requisition of this section, shall forfeit and pay the

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sum of ten dollars, besides double tolls on all property omitted in the bill or bills of lading. ARTICLE 17.

SECT. 332. Each boat navigating the canal shall have a separate clearance, and no part of the cargo of any boat shall be cleared to the place beyond that to which the boat is cleared. Each boat to have clearance —boat and cargo for same place.

SECT. 333. No boat or other float shall proceed beyond the place to which it shall be cleared, nor shall any article of its cargo be unladen after its arrival at the place for which such article is cleared, nor proceed beyond such place, until the master shall have delivered the clearance of such boat or float to the collector at the place for which it is cleared, if there be any collector at such place. On arrival, clearance to whom and when deliver'd.

SECT. 334. If there be no collector at such place, the master shall deliver the clearance to the last collector whose office shall be passed by the boat in the order of the voyage, and shall receive a permit from such collector to proceed to the place to which the boat or float is cleared. If no collector to whom.

SECT. 335. Every master who shall omit to deliver a clearance to the collector to whom the same ought to be delivered, shall forfeit the sum of twenty-five dollars. Penalty.

SECT. 336. Every collector issuing any clearance, or in whose office any clearance is on file, shall, whenever requested, give a certified copy thereof, with the additional cargo entered thereon, and the several endorsements of other collectors, for which he shall be entitled to demand and receive from the persons applying for the same, if such certified copy does not contain over one hundred words, ten cents; and if such copy contains over one hundred words, he shall be entitled to receive pay therefor, at the rate of ten cents for every one hundred words. Copies of clearances. Fees.

SECT. 337. Such certified copy of any clearance shall have the same validity and effect as the clearance of which it is a copy. Its validity and effect.

SECT. 338. Whenever a difference shall arise between a collector and the master of any boat or float as to the amount of tolls chargeable on the lading of such boat or float, the collector shall detain the boat or float, and the articles on which toll is to be charged, and shall weigh, count, or measure, the articles, as the case may require; and if it shall be ascertained that the weight, number, or feet, exceeds the amount stated in the bill of lading thereof, the collector shall charge tolls according to the weight, number, or feet, thus found, and the master shall pay to the collector the expense of such weighing, counting, or measuring; and such expense shall be chargeable on such articles, and on the boat or float containing them. Proceedings when master and collector do not agree. Expense, how paid.

SECT. 339. The master of every boat or float shall be liable for the payment of tolls and expenses chargeable on such boat or float and its cargo; and it shall be the duty of every collector to detain all articles on which tolls or expenses are chargeable, and the boat or float containing them, until such tolls and expenses shall be paid. Master liable for charges. Boat and articles may be detained.

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PART 1.

Collector may distrain. When to sell.

SECT. 340. If such payment be refused, the collector shall, in the name, and on behalf of the state of Indiana, distrain so much of the property detained as shall be sufficient to satisfy the charges thereon; and, at the expiration of ten days, if such charges shall remain unpaid, he shall expose to sale, at public auction, the property distrained, at his usual place of receiving tolls, and sell the same to the highest bidder, between the hours of ten o'clock, A. M., and four o'clock, P. M., having first given

Notice thereof.

two days' notice of such sale, and a description of the property to be sold, by advertisements posted up in three of the most public places in the township in which such collector's office is situated.

Surplus, to whom paid.

SECT. 341. Any surplus avails of such sale, after the payment of the sum charged thereon, including costs of distress and sale, shall be paid, on demand, to the master of the boat or float, or to the owner of the property distrained.

List of passengers.

SECT. 342. Every master of a boat or float shall make out for every voyage, a correct list of all passengers over twelve years of age, that may have been transported on board of said boat or float for the distance of one mile or upwards; which list shall, in all cases, exhibit distinctly and legibly, written with ink, in separate columns to be provided for that purpose, first, the name of each passenger on board of the boat at the time of the arrival thereof at any place where there is a collector's office, or who shall have been transported on board thereof during the voyage; second, the name of the place, or the distance from some place of notoriety on the canal, where such passenger came on board; third, the place to which such person may have taken passage; fourth, the place where such passage actually ended if at a place different from that to which passage was taken; which list shall, in all cases, be attached to the clearance of the boat, and, with the clearance, be delivered

To whom delivered.

to the collector to whom the clearance is required to be delivered, whose duty it shall be to examine said lists, and see that all the passengers are correctly entered on the same.

Oath required thereto.

SECT. 343. It shall be the duty of every collector to whom any list of passengers is required to be delivered, at or near the termination of any voyage on the canal, to administer an oath or affirmation to the master of the boat as to the correctness of any list, which oath or affirmation shall also be attached to said

Master to pay tolls to collector.

list, and be subscribed by the master of the boat, who shall immediately pay to such collector the amount of tolls due on said passengers.

Penalty for neglect to make oath, or to pay.

SECT. 344. If any master of a boat or float shall refuse to make the oath or affirmation, and to subscribe the same as is required in the preceding section, or shall refuse or neglect to pay the tolls that may be due on passengers transported on board said boat, he shall, for every such refusal or neglect, forfeit and pay the sum of twenty-five dollars over and above the tolls that may be due.

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ARTICLE 17.

Penalty for neglect to deliver list.

SECT. 345. If any master of a boat shall wholly neglect or refuse to make out and present a list of passengers, when any passenger or passengers shall have been transported on board such boat, as is required by the three hundred and forty-second section of this chapter, he shall forfeit and pay the sum of twenty-five dollars, together with double tolls on all passengers transported during the voyage.

Penalty for correct list.

SECT. 346. For presenting an incorrect list of passengers, not conformable to the requirement of the three hundred and forty-second section of this chapter, the master presenting the same shall, for every omission, forfeit and pay the sum of five dollars, together with double tolls on the number of miles omitted in said list: provided, that for each passenger whose name shall be omitted on said list, the master shall forfeit and pay the sum of ten dollars.

Who considered a passenger.

SECT. 347. Every person, over twelve years of age, who shall go on board of any boat for the purpose of being transported, shall be considered a passenger, whether any price may be demanded for the transportation of such person or not, and whether he may pay for his passage in money, in labor, or otherwise.

Tolls paid before clearance.

SECT. 348. All tolls chargeable on any boat or float for any voyage about to be made on any of the canals of this state, shall be paid to the collector, (who is required to issue a clearance for such voyage,) before such clearance shall be issued and no collector shall be required to issue a new clearance for any boat till all arrearages of tolls chargeable on such boat shall be paid.

No new clearance until all tolls are paid.

Permit, when to be issued.

SECT. 349. Any collector, from whom is required a clearance, agreeably to the three hundred and seventeenth and three hundred and eighteenth sections of this chapter, may issue a permit instead of a clearance, provided the voyage for which such permit shall be issued, shall not extend to, nor within, a mile of any place on the canal where there is a collector's office.

Tolls, when to be paid at termination of voyage.

SECT. 350. In all cases where a boat or float shall commence a voyage at any place more than one mile distant from any collector's office, and which voyage shall terminate at any place at which, or within a mile of which, there is a collector's office, all tolls chargeable on such boat or float, and the cargo on board thereof, shall be paid to the collector at or near whose office such voyage terminates, and a permit shall be obtained from such collector for unlading, before any part of the cargo of such boat or float, or any article composing any such float, shall be unladen, landed, or removed from the canal; and for every violation of any of the provisions of this section, the master of such boat or float shall forfeit and pay the sum of ten dollars, and also double tolls on every article so unlawfully landed, removed, or unladen; for the payment of which penalties and tolls, such articles, and also every owner or part owner of any such boat, float, or article shall be liable.

Penalty.

Master and owners liable.

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PART I.

Statement of cargo to be recorded, and signed and sworn to by master.

SECT. 351. It shall be the duty of every collector, to whom bills of lading are required to be presented, in order to obtain a clearance for any voyage, agreeably to the three hundred and twenty-first, three hundred and twenty-second, and three hundred and twenty-third sections of this chapter, to make out from such bill or bills of lading, in a book to be provided by him for that purpose, a certificate containing a pertinent description of the articles composing the cargo of the boat or float, or composing such float, for which a clearance is about to be issued, properly classified and designated, with reference to the rates and amount of tolls chargeable thereon; which certificate shall be signed by the master of such boat or float, who shall also attest, on oath or affirmation, to the correctness thereof, if required by the collector, before the clearance for such boat or float shall be issued.

Way cargo likewise recorded, signed, and sworn to.

SECT. 352. In case any property, not contained in the certificate prescribed in the preceding section, shall be received on board of any boat, after said boat shall have proceeded one mile from any collector's office, the collector whose office shall be next in order in the course of the voyage, to the place where such property was received on board, shall make out a certificate of all such property, in a book to be provided by him for that purpose, conformably to the requisitions of the preceding section, which shall be signed, and if the collector shall require, be attested by the master of such boat or float on oath or affirmation.

Penalty.

SECT. 353. Every master of any boat or float, who shall, in any respect, refuse to comply with the requirements of the two preceding sections, or who shall sign a false certificate, shall, for every such refusal or offence, forfeit the sum of twenty-five dollars.

Endorsement of cargo to be made on clearance.

SECT. 354. In every case where a certificate is required to be made out and signed, agreeably to the provisions of the three hundred and fifty-first and three hundred and fifty-second sections of this chapter, the collector shall enter upon the clearance a correct list or statement of all articles of lading contained in such certificate, properly classified and designated, with the amount of tolls charged and received thereon, and shall sign his name thereto.

Bills of lading, clearance, &c., where to be presented on arrival.

SECT. 355. On the arrival of any boat or float at the place of destination, or at any place in the course of the voyage where there is a collector's office, if in the day-time, the master thereof shall immediately present to the collector the bill or bills of lading, as required by the three hundred and twenty-first, three hundred and twenty-second, and three hundred and twenty-third sections of this chapter, together with the clearance and list of passengers; and if such boat or float shall arrive in the night-time, the same shall be presented between the time of arrival and one hour after sunrise.

But not to proceed until so presented, and payment &c.

SECT. 356. No boat or float shall proceed on its voyage until the bill or bills of articles of lading on board thereof, or composing such float, together with the clearance and list of passengers,

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shall have been presented to the collector as provided in the preceding section, nor until all necessary examinations and comparisons of such bills of lading, clearance, and cargo shall have been made, nor until all tolls chargeable on such boat, float, or cargo, payable at such office, shall have been paid, and the necessary certificate of an additional cargo, if any, shall have been signed, and, if required by the collector, attested on oath or affirmation; and the collector may detain both the bills of lading and clearance until the necessary entries shall be made on such clearance, and until all the requisitions of this section shall be complied with.

Penalty for neglect.

SECT. 357. In case any boat or float shall depart from any place where there is a collector's office, without a clearance or permit, or shall pass by any place where there is a collector's office without first having complied with each and every provision of the preceding section, the master thereof shall in each case forfeit and pay the sum of ten dollars, together with double tolls on all articles on which tolls were payable at such office.

No landing of cargo until permit.

SECT. 358. No part of the cargo of any boat or float, nor any article composing such float, or any part thereof, shall be unladen, landed, or removed from the canal, at the termination of any voyage on such canal, nor at any place on the canal within one mile of a collector's office, until the clearance, together with the bill or bills of lading of the whole cargo of such boat or float shall have been presented to the proper collector, and a permit obtained from such collector for such unlading, landing, or removal, which permit such collector is hereby required to grant, after a reasonable time shall have elapsed for the examination of such clearance, bills of lading, and cargo, and on the payment of all tolls which shall remain due; and for every violation of the provisions of this section, the master of such boat or float shall forfeit and pay the sum of ten dollars, and also double the amount of tolls chargeable on the article or articles so unlawfully landed, removed, or unladen; provided, that in all cases where any boat shall be in a leaky condition, or where from any other cause, goods or property on board any such boat shall be in danger of damage or perishing by delay, and the proper collector cannot be found, such goods or property may be landed or secured until such collector may be found, and a permit obtained for the further removal of the same.

Permit, when to be granted.

Penalty.

When property is in danger.

Boats navigating without authority to be seized.

SECT. 359. In any case where any boat or float shall navigate, or attempt to navigate, on any of the canals of this state, without being legally authorized so to do, it shall be the duty of every lock tender, superintendent, or other authorized agent of the state, on being notified thereof, to stop and detain such boat or float until the same shall be legally authorized to proceed.

Clearance to be exhibited to first lock tender or superintendent.

SECT. 360. For the purpose of ascertaining whether any boat or float which shall be found navigating on a canal of this state is authorized so to do, it shall be the duty of the master thereof to exhibit to the lock tender, at the first lock at which such boat or float shall arrive, after having departed from or

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passed by any place at which there is a collector's office, the clearance of such boat or float; and if there be no lock tender at such lock, then the same shall be exhibited to the first lock tender or superintendent who shall be passed in the order of the voyage from such collector's office, and who shall demand to see such clearance; and if the clearance shall not be so exhibited, such lock tender or superintendent shall stop such boat or float from proceeding further on the canal, until the same shall be legally authorized so to do.

Boat to be detained.

Penalty for violation of two preceding sections.

SECT. 361. The master of any boat or float who shall pass, or attempt to pass, in contravention of the provisions of the two preceding sections, shall forfeit and pay the sum of twenty-five dollars, and also be liable for all damages that may accrue in consequence of such violation.

U. S. property and boats free.

Proof.

SECT. 362. All boats, floats, or other property of the United States, shall be permitted to navigate, or be transported on any of the canals of this state, free from the payment of tolls, provided satisfactory proof be made to the proper collector that the same is, bona fide, the property of the United States; but all such boats, floats, or other property, shall be reported cleared, and in all other respects, be subject to all and singular the rules, regulations, provisions, forfeitures, and liabilities, prescribed by the laws of this state.

Collecter to examine as to claim of exemption.

SECT. 363. Any collector may examine, on oath or affirmation, the master of any boat or float for which exemption from the payment of tolls is claimed, under the provisions of the preceding section, and the master of any boat or float, on board of which is transported any property for which such exemption is claimed, as to the ownership of such boat, float, or other property; and if he shall refuse to answer such proper questions as may be propounded by such collector, in relation to such ownership, or if from his answers, the collector shall not be satisfied that the boat, float, or property in question, is the property of the United States, tolls shall be charged and paid thereon, as in other cases.

Owners, and also boat, liable for penalties, forfeitures, and tolls.

SECT. 364. Every owner and part owner of any boat or float, and also, such boat or float shall be severally liable for the payment of all penalties and forfeitures incurred by the master thereof, or by any boatman, or other person assisting in the navigation or management of such boat or float, and also for the payment of all tolls chargeable thereon, or chargeable on any property or passengers transported on board thereof.

Meaning of term "float."

Term "master."

SECT. 365. The term "float" as used in this article shall be construed to embrace every boat, vessel, raft, or floating thing, navigated or moved on either of the canals, under the direction of any person or persons having charge thereof; and the term "master" as so used, shall be construed to apply to every person having for the time the charge, control, or direction, of any such float.

Master, owner, and boat, liable for certain pe-

SECT. 366. The captain, or master, and the owner, or part owner, of any boat or other float, on any of the canals autho-

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rized to be made in this state, and likewise the boat or float itself, shall severally be liable for the payment of any penalty or forfeiture, and likewise of all damages which may accrue in consequence of the violation of any of the provisions of any law of the state relating to the canals, the navigation thereof, or the collection of tolls thereon, by any person navigating any such boat, or assisting in the navigation or management thereof, at the time of such violation; and every such boat or water float, may, at the discretion of any acting commissioner, resident engineer, or any collector of tolls, be prevented from navigating any of said canals, until such penalty, forfeiture, and damages and costs accrued in prosecuting therefor, shall be fully paid.

Penalties, forfeitures, and damages.

Boat may be detained.

SECT. 367. When any suit shall be prosecuted for any such penalty or forfeiture, the magistrate issuing the process, by a clause to be inserted therein, may direct the officer serving the same to detain such boat or float and the horses and furniture belonging thereto, until the suit shall be determined, or until adequate security shall be given for the payment of any judgment that may be recovered.

Process, and its effect on boat, &c.

Release, if security is given.

SECT. 368. If such security shall be given, or the defendant in such suit shall prevail, the magistrate shall order the boat or other float and property detained to be released; but if no security be given, and a judgment shall be recovered for such penalty or forfeiture, and the same, together with the costs shall not be immediately paid, an execution shall be forthwith issued, under which the property so detained may be sold in like manner as if the judgment had been rendered against the owner or owners thereof.

When released.

When sold.

SECT. 369. Every penalty and forfeiture prescribed by this act and for which any owner, master, boatman, navigator, or other person having charge of any boat or float, or assisting in the management thereof when such penalty or forfeiture is incurred, may be liable, shall be chargeable on such boat or float; and a suit, in the name and on behalf of the state of Indiana, for the recovery of such penalty or forfeiture, may be brought by any collector, lock tender, superintendent, engineer, or acting commissioner, before any justice of the peace or before any court of competent jurisdiction, either against the person who was master of the boat at the time the penalty or forfeiture was incurred, or against any person having charge or possession of such boat or float at the time such suit is commenced.

Penalty chargeable to boat.

Suit therefor.

Who may sue.

Against whom.

SECT. 370. If any collector, superintendent, acting commissioner, engineer, or other person, shall commence any suit, or institute any other proceedings under the provisions of this article, and judgment shall be rendered for the defendant in such suit or other other proceeding, or discontinued without the consent of the parties, such collector, superintendent, acting commissioner, engineer, or other person commencing such suit or other proceeding, shall be liable to the defendant or other person interested therein, for all costs and hinderances, delay and other damages sustained thereby, to be recovered by action on

Prosecutor liable for damages, unless probable cause.

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the case, in any court of competent jurisdiction, unless the court or jury, as the case may be, shall be satisfied by evidence produced by the defendant in the action brought for the recovery of such damages, that there was probable cause for commencing and carrying on such former suit or other proceeding.

Appeal.

SECT. 371. In all prosecutions and proceedings under this article it shall be lawful for either party to appeal to the circuit court of the proper county, upon the same conditions, and in the same manner as appeals are allowed by law in civil cases, cognizable by justices of the peace.

Who authorized to sue for penalties, &c.

SECT. 372. The acting commissioner of the Wabash and Erie canal, resident engineer, superintendent, lock tenders, or collectors, shall be authorized to commence suit against any person charged with the commission of any offence, or made liable under the provisions of this article, before any justice of the peace in the county where the person so charged or made liable may be found, or in the county where the offence was committed; and if any person so charged or made liable, shall, when before the justice for trial, ask for an adjournment of the trial or a continuance of the case, and the justice shall deem it expedient to grant such adjournment or continuance, it shall thereupon be his duty to reduce to writing the testimony of each witness in attendance on the part of the state, and to cause the same to be subscribed and sworn to; the defendant shall have a right to cross examine witnesses, and the depositions so taken shall be competent evidence on the trial of the case before said justice; and should the case be appealed, they shall be competent evidence upon the trial in the appellant court.

If continued, depositions, how taken.

Money received for fines, how accounted for.

SECT. 373. All moneys received on behalf of the state for fines, penalties, or damages, under the provisions of this article, by any person other than a collector, shall, after the costs and expenses of collection are deducted, be paid over to the collector whose office is nearest to the place where such moneys are received or collected, within twenty days of the time that such moneys were received or collected, and shall be, by such collector, accounted for in the same manner as he accounts for tolls collected by him.

Penalty for neglecting to pay over.

SECT. 374. Any person who shall neglect or refuse to pay over moneys received or collected by him, agreeably to the provisions of the preceding section, shall, on conviction thereof, forfeit and pay twenty-five per centum on the amount so detained by him, as a penalty, which penalty and the amount detained, shall be sued for and collected by the collector to whom the moneys so detained should have been paid, in an action of debt for and on behalf of the state.

Boats not to lie so as to impede navigation.

SECT. 375. No boat or other float shall lie in a lock or in any other part of any of the canals of this state, in such a position as to prevent the free passage of any other boat or float which otherwise could navigate or pass on the canal.

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ARTICLE 17.

Heavily laden boats unable to navigate, shall not obstruct others.

SECT. 376. In all cases where the water shall be partially drawn off from any part of any of the canals, or in consequence of a breach, or for the purpose of making repairs, or from any other cause, so as to prevent the passage of heavily laden boats thereon, every boat or other float detained or prevented from proceeding on its voyage thereby, shall be so moored and placed as not to obstruct the passage of other boats or floats, requiring less depth of water to enable them to navigate the canal; and if any boat or float so detained or prevented from proceeding in consequence of the want of sufficient water shall, either by design, or by accident, or by inadvertence, be so moored or placed as to prevent the passage of other boats, the master or other person having, for the time being, the care of the boat or float so moored or placed, on the application of the master of any other boat or float whose passage is obstructed thereby, shall immediately cause the boat or float occasioning such obstruction to be removed, if practicable, so as to permit the free passage of other boats or floats.

Penalty.

SECT. 377. The master of any boat or float who shall violate any of the provisions of the two preceding sections, shall for every such violation, forfeit and pay the sum of ten dollars.

Passenger boats entitled to preference in passing locks.

SECT. 378. Any boat employed principally in the transportation of passengers, and paying toll as such, after having arrived within two hundred yards of any lock, shall have the privilege of passing through such lock in preference to any boat employed principally in the transportation of property other than passengers, and paying toll as such, not having actually entered such lock at the time such passage boat shall have arrived within two hundred yards of such lock: provided, nevertheless, that any boat employed principally in the transportation of property, passing on the canal in an opposite direction from such passage boat, if within two hundred yards of any lock which is at the same time ready to receive such freight boat, shall have the privilege of entering and passing through such lock so being ready, in preference to such passage boat.

Penalty.

SECT. 379. The master of any boat or float who shall violate the provisions of the foregoing section, shall forfeit and pay the sum of ten dollars and moreover be liable for all damages consequent upon such violation.

Certain boats to have fenders.

SECT. 380. No boat or other float strapped or faced with iron on the front part of the stem or other most prominent part of the bow thereof, so as to be liable to strike with such iron facing against any part of any lock, lock gate, guard gate, bridge, or other work or device appertaining to the canal, shall be permitted to navigate or be moored on any of the canals of this state unless there shall be suspended and thoroughly secured in front of the stem or other most prominent part of the bow of such boat or float, in such manner as effectually to prevent the iron facing or strap thereof from striking upon or against any lock, lock gate, guard gate, bridge, or other work or device

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appertaining to the canal, a good and sufficient fender composed of rope or rope yarn, at least six inches in diameter.

Penalty.

SECT. 381. The master of any boat or float which shall be found navigating or moving on any of the canals of this state, in contravention of the preceding section, shall forfeit and pay the sum of five dollars for each offence; and each mile that a boat or float shall be moved in contravention of the provisions thereof, shall be considered a new offence.

No clearance if boat is unprovided with fender.

SECT. 382. No clearance shall be granted to any boat or float, which shall not, at the time of applying for such clearance, be provided with such fenders in cases where the same shall be required by the preceding section; and it shall be the duty of every collector of tolls, inspector, superintendent, or resident engineer, lock tender, or superintendent of repairs, to see that the said section be strictly enforced; and, for that purpose, each and every of them shall be authorized to detain any boat or float, moving or attempting to move on any of the canals, until that section be complied with, and all penalties for the violation thereof be fully paid and satisfied.

Boat may be detained.

Penalty for not having bow line.

SECT. 383. If any boat or float shall be found navigating any of the canals of this state without a good and sufficient bow line, the master thereof shall forfeit and pay the sum of five dollars for each and every offence; and each mile such boat or float shall proceed in violation of this section, shall be considered a new offence.

Who to determine sufficiency of bow line.

SECT. 384. Each collector of tolls, superintending engineer, superintendent of repairs, or lock keeper, on the canal where such boat or float shall pass, is hereby authorized to determine the sufficiency of the bow line, and each and every of them is authorized to detain such boat or float until the requisitions of the preceding sections are complied with, and all penalties incurred by their violation paid.

Boat may be detained.

Boats not to be named alike.

SECT. 385. No boat or float shall be permitted to navigate any of the canals of this state, having the name of any other boat on the same canal.

Penalty.

SECT. 386. The master of any boat or float who shall violate the preceding section, shall forfeit and pay the sum of ten dollars for each and every offence; and every mile navigated in contravention thereof shall be considered a distinct offence.

No litter to be deposited.

SECT. 387. No hay, straw, manure, or other litter of any kind, shall be deposited in any part of any of the canals of this state, nor on either of the banks thereof.

Penalty.

SECT. 388. Any person violating the preceding section shall forfeit and pay the sum of ten dollars for each offence, and all damages incident thereunto.

Master, owner, and boat liable.

SECT. 389. The master of any boat or float who shall violate the provisions of any of the preceding sections, or permit it to be done by the hands or passengers on board said boat or float, shall forfeit and pay the penalties and damages aforesaid; and the owners and part owners, and also the boat or float itself, shall be held liable; and said boat or float may be

Boat detained.

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detained by any collector, lock keeper, superintendent or engineer, on said canals, until all penalties and forfeitures are paid.

SECT. 390. The horse or horses of any boat navigating the canals of this state, shall not pass over a towing path bridge faster than a walk, nor pass into or out of any boat or float over or upon the walls or sides of any lock on any of the canals of this state; and the master of any boat or float who shall violate this regulation, or permit it to be done by others, shall forfeit and pay the sum of five dollars. Horses not to pass bridge faster than a walk. Not to pass over sides of canal. Penalty.

SECT. 391. Every boat passing on any of the canals of this state, or any feeder of them, is required, at all times during the night, to carry conspicuous lights on the bow of the boat; and every infraction of this section shall subject the master, owner, or navigator, to the penalty of ten dollars. Lights to be carried. Penalty.

SECT. 392. Any person who shall carry fire in any form on or across any wooden structure on any of the public works of this state, unless the same shall be enclosed in a lantern, or some other closed vessel, shall, for every such offence, forfeit and pay the sum of ten dollars, and, moreover, be made liable for all damages occasioned by such violation. Fire not to be carried over bridge, &c. Penalty.

SECT. 393. The secretary of state is hereby required to cause to be printed, in pamphlet form, three hundred copies of this article, and forward them to the commissioner of the Wabash and Erie canal, at Peru, as early as practicable. Copies to be printed.

SECT. 394. All laws and parts of laws contravening any of the provisions of this article, are hereby repealed. Repeal.

SECT. 395. This article to take effect and be in force from and after the first day of April next. In force, when.

CHAPTER 14.

OF THE STATE UNIVERSITY AND COUNTY SEMINARIES.

ARTICLE 1. Of the state university.
ARTICLE 2. Of county seminaries.

ARTICLE I.

Of the state university.

SECTION
1. University established.
2. Board of trustees incorporated.
3. Their number, residence, and powers. 1. To elect president. 2. To elect secretary, treasurer, &c., and fix compensation. 3. Fill vacancies. 4. Possess the property, rights, &c.

SECTION 3—*Continued.*
of former trustees. 5. Hold property. 6. To sell, rent, &c. 7. To expend income. 8. Vacate seat of trustee. 9. Elect faculty, &c. 10. Prescribe compensation. 11. Prescribe course of study.

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SECTION
4. Former rules to continue until changed
5. Former officers to continue until changed.
6. Former times and place of meeting to continue until changed.
7. Buildings, &c. to vest in trustees for use of university.
8. Trustees to receive and expend proceeds of reserved sections.
9. Income from loan office, how expended.
10. Of the faculty and their powers.
11. Trustees not to be members of faculty.
12. No religious test to be required.
13. No sectarian tenets to be taught.
14. Two free students from each county to be taught.

SECTION
15. Will of donor to be regarded in use of property.
16. Former contracts, rights, and actions to survive against trustees; also those in favor of trustees.
17. Treasurer to give bond.
18. A board of visiters established.
19. Quorum.
20. Their duty.
21. Same.
22. To make report.
23. Books, &c. open to their inspection.
24. Secretary to keep record, list of students, &c.
25. Treasurer to keep accounts, make payments, collections, and statements.
26. Reports to be made to superintendent of common schools.

University established.

SECTION 1. The university established and incorporated by virtue of the act entitled, "An act to establish a college in the state of Indiana," approved January 24th, 1828, is hereby recognized as the university of this state.

Board of trustees incorporated.

SECT. 2. The board of trustees, as at present constituted, under and by virtue of said act, shall continue to be a body corporate and politic, and be hereafter known as such, by the name of "The Trustees of the Indiana University," with capacity in that name to sue and be sued, plead and be impleaded, and to have perpetual succession.

Number, residence, and powers.

SECT. 3. Said board shall continue to consist of nine persons, who shall be residents of this state, and besides the general powers of a corporation, shall have power,

Elect a president.

1. To elect one of their number president of such board.

— secretary, treasurer, &c. and fix compensation.

2. To appoint a secretary, treasurer, and such other officers as they may deem necessary for the good order and government of said corporation, and to prescribe their duties and fix their compensation.

To fill vacancies.

3. Upon the death, removal out of the state, or other vacancy in the office of any trustee, to elect another in his place by a majority of the votes of the trustees present.

Property, rights, &c. of "Indiana college."

4. To possess and enjoy, for the benefit of the university, the personal property, rights, credits, and effects of the trustees of the Indiana College, and all things appertaining thereto.

Hold property.

5. To take and hold, in their corporate name, any real or personal estate, by gift, grant, or devise.

To sell, &c.

6. To sell, mortgage, let, and otherwise use and dispose of such property, and the income therefrom derived, in such manner as they may deem most conducive to the interest of the university.

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7. To expend the income placed under their control by the provisions of this chapter, in such manner as shall best promote the interest and prosperity of the university. To expend, &c.

8. To declare vacant the seat of any trustee who shall absent himself from five successive meetings of the board, or be guilty of gross immorality, or any breach of the by-laws. To vacate seat.

9. To elect a president and such professors and other officers for such university as shall be necessary, who shall hold their offices during the pleasure of the trustees. To elect faculty, &c.

10. To prescribe the duties, salaries, and emoluments of such officers. To prescribe duties and compensation.

11. To prescribe the course of study and discipline to be observed in the university, and the price of tuition. To prescribe course of study, &c.

12. To make all ordinances and by-laws necessary and proper to carry into effect the powers herein conferred. To make by-laws.

SECT. 4. All the rules, ordinances, and by-laws established by the trustees of the Indiana College, and now in force, shall continue in force, and be applicable to the corporation hereby created, until altered or repealed by the trustees of the Indiana University. Rules of college to continue until, &c.

SECT. 5. The officers appointed by the said trustees of the Indiana college, and the faculty of said college as now constituted, shall continue to act as the officers of the trustees of the Indiana University, and the faculty thereof, until by said trustees changed. Officers of college, &c. to continue until, &c.

SECT. 6. The said trustees shall meet at the times and place appointed for the meetings of the trustees of the Indiana College, until other times and places are appointed. Times and place of meeting.

SECT. 7. The public buildings and land thereto attached, situate near Bloomington, in Monroe county, in this state, heretofore occupied and used by the trustees and faculty of the Indiana college, for the purposes thereof, and all the personal property, rights, credits, and effects of the trustees of the Indiana College shall vest in the trustees of the Indiana University, for the use thereof; such real estate not to be sold or converted to any use whatever. Buildings, &c. to vest in trustees for use of university.

SECT. 8. The trustees of said university shall be entitled to receive the proceeds of the sales and rents of the three reserved sections in the seminary township in Monroe county, and the same shall be paid to the treasurer of said trustees, on their order, to be expended for the purposes provided in the acts providing for the sale of said sections, approved January 29th, 1830, and February 4th, 1837. To receive and expend proceeds, &c. of reserved sections.

SECT. 9. The interest arising from loans of the state university fund shall, as received at the state treasury, be paid on the warrants of the auditor of public accounts; such warrants to be granted on allowances made to the persons entitled thereto by the board of trustees, and duly certified by their clerk. Income from loan office, how expended.

SECT. 10. The president, professors, tutors, and instructers shall be styled the faculty of said university, and shall have power: Faculty, who, and powers.

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1. To enforce the rules and regulations adopted by said trustees for the government of the students.

2. To which end they may reward and censure such as deserve it, and may also suspend those who continue refractory, until a determination of the board of trustees can be had thereon.

3. To grant and confer, by and with the consent and approbation of the trustees, such literary honors and degrees as are usually granted and conferred in other colleges and universities in the United States, and in testimony thereof to give suitable diplomas, under the seal of the university and signature of the faculty.

Trustee not to be member of faculty.

SECT. 11. No member of such faculty, or other officer of the university, shall, while acting in that capacity, be a trustee.

No religious test.

SECT. 12. No religious qualification or test shall be required from any student, trustee, president, professor, or other officer of such university, or as a condition for admission to any privilege in the same.

No sectarian tenets to be taught.

SECT. 13. No sectarian tenets or principles shall be taught, instructed, or inculcated at said college, by any president, professor, tutor, or instructor therein.

Free students. Chap. 6, sec. 33.

SECT. 14. The trustees shall provide for the tuition, free of charge, of two students from each county in this state, to be selected by the board of county commissioners.

Will of donor to be regarded in use of property.

SECT. 15. In the management and application of any property, real or personal, and the proceeds thereof, to the use of said university, the trustees shall conform to the will and directions of the donor thereof, if any such shall have been connected with such donation.

Contracts, &c. of former trustees to be performed; rights and actions against, &c. to survive.

SECT. 16. The trustees of the Indiana University shall fulfil and perform all the lawful contracts made and liabilities incurred by the trustees of the Indiana College, and all actions and rights, and causes of action against said trustees of the Indiana College, shall survive, and may be prosecuted against the said trustees of the Indiana University; and in like manner all rights and causes of action in favor of the trustees of the Indiana College, shall survive, and may be prosecuted by the trustees of the Indiana University.

Rights and actions in favor of trustees to survive.

Treasurer to give bond.

SECT. 17. The said trustees of the university shall require of their treasurer to give bond, with sufficient security, in double the sum likely to come into his hands; which shall be filed with, and preserved by the auditor of public accounts.

Board of visiters.

SECT. 18. A board of visiters of said university is established, to consist of the governor, lieutenant governor, speaker of the house representatives, the judges of the supreme court, the president judge of the Monroe circuit court, and the superintendent of common schools.

Quorum.

SECT. 19. Any three of said visiters, when convened, shall constitute a quorum for the transaction of business.

Duty of visiters

SECT. 20. Said visiters shall annually visit said university, and shall examine the condition of the property, real and personal, belonging to the same; the course of instruction and

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discipline adopted by the trustees and pursued by the faculty; the proceedings and by-laws of the trustees; and the state of the finances of the university.

Same.

SECT. 21. They shall recommend to the board of trustees such alterations and amendments as they may deem expedient in regard to the matters aforesaid.

Make report.

SECT. 22. They shall also make report of their examinations aforesaid to the governor of this state, to be by him laid before the general assembly.

Books, &c., to be open to inspection.

SECT. 23. The books, records, and accounts of said university, and of the several officers thereof, shall be open to the inspection of said visiters, or any one of them.

Secretary to keep record, &c.—List of students.

SECT. 24. The secretary of the board of trustees shall keep a true record of all the acts and proceedings of said board, and make and certify to copies thereof. He shall also keep an account of the students in said university according to their classes, stating their respective ages and places of residence, and a list of all graduates.

Treasurer to keep accounts, make payments, and collections.

SECT. 25. The treasurer of said university shall, first, keep full, true, and faithful accounts of all money received into the treasury of said university and of the expenditure thereof. 2. Pay out the same on the order of the board of trustees, certified by their clerk. 3. Keep accurate accounts with all persons having dealings with such university. 4. Collect the tuition fees due the same. 5. Make semi-annual settlements with the board of trustees. 6. Submit a full and proper statement of the finances of the university and of his receipts and payments, at each meeting of the board of trustees. 7. Submit his books and papers to the inspection of the trustees and visiters.

Submit statements.

Reports to superintendent of public schools.

SECT. 26. The board of trustees, and their secretary and treasurer, shall make report to the superintendent of public schools, of all matters relating to said university, when thereto required by said superintendent.

ARTICLE II.

Of the management of county seminaries.

SECTION

27. Site for county seminary, how procured.
28. Building, when and how to be erected.
29. Expense, how defrayed.
30. Fund, how applied to support of seminary.
31. Trustees, when and how appointed.
32. Trustees a body corporate, shall elect officers, for what term.

SECTION

33. One third of trustees to retire annually.
34. Powers and duties of board, president, and clerk.
35 Prosecuting attorney to attend to all suits.
36. Power of county commissioners to supervise and remove trustees.

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PART 1.

Lot for county seminary, how procured.

SECT. 27. As soon as may be convenient, the board of county commissioners in each county shall procure a good and sufficient title in fee simple, in the name of the state, for the use of the county seminary, to some suitable tract of land, whereon to erect a county seminary.

When and how, building to be erected.

SECT. 28. Whenever the fund in any county shall amount to four hundred dollars the said board may proceed to contract with the lowest and best bidder, for the erection of such buildings as may be necessary, giving such reasonable notice of the letting out of such contract as may ensure fair competition.

Expense, how defrayed.

SECT. 29. For the expense of procuring such land and erecting and furnishing such building, the said board shall make the necessary allowances, payable out of the seminary fund, to be audited and drawn for by the auditor on the treasurer.

Fund, how applied to support of seminary.

SECT. 30. The board of county commissioners shall designate and set apart the whole of said seminary fund remaining and accruing after the buildings are erected, or such part thereof as they may deem expedient, for the support of such county seminary, to be expended under the direction of the board of trustees.

Trustees, when and how appointed.

SECT. 31. Whenever said board shall have erected a building and shall determine to organize a county seminary therein, they shall appoint six citizens of said county who shall constitute a board of trustees for said seminary.

Body corporate —to elect officers.

SECT. 32. The said trustees shall be a body corporate and politic, and shall elect one of their own body as president, and shall have power to appoint a clerk; such president and clerk being removable at the pleasure of the board of trustees.

One third of trustees to retire annually.

SECT. 33. One third of said trustees shall go out of office every year and their places be filled by new appointments made by the board of county commissioners.

Powers and duties of trustees.

SECT. 34. The powers and duties of said board of trustees, their president and clerk, shall be as follows:

To employ teachers and prescribe course of instruction.

1. The said board shall employ all teachers, and shall determine the course of instruction to be pursued in such seminary.

To prescribe compensation of teachers, &c.

2. They shall fix the compensation of such teachers, and of the clerk of said board.

To appropriate tuition fees, and such funds as commissioners shall set apart.

3. For the payment of such teachers and clerk and other incidental expenses, such board shall have power to appropriate the tuition fees, and such part of the principal and interest of the seminary fund as the board of county commissioners shall designate and set apart for that purpose.

Manner of payment.

4. The said board of trustees shall certify the several sums due to teachers and others, payable out of such seminary fund, after exhausting tuition fees; and the auditor shall audit the same, and draw his warrant on the treasurer, in favor of the person entitled thereto.

Duty of president.

5. The president shall preside at all meetings of the board, and shall sign the minutes of proceedings, and all certificates.

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ARTICLE 1.

Duty of clerk.

6. The clerk shall keep a record of the proceedings of the board and attest all certificates; shall keep accounts of receipts and expenditures; shall make and preserve statements of the number, age, and studies of the pupils, and attend to all other matters given to him in charge by the board of trustees.

Reports, contents, and to whom made.

7. The board of trustees shall cause abstracts of these statements and accounts, showing succinctly the number, age, and studies of the pupils, and the expense of instruction, to be annually made on the thirty-first of October, and shall cause one copy to be forwarded to the county auditor, and another to the superintendent of common schools, for the use and inspection of the legislature.

Quorum.

8. A majority of any board of trustees duly assembled may transact any business relating to their seminary.

By-laws.

9. The board of trustees shall have power to establish by-laws for the government of themselves, their officers, and the teachers and scholars of such seminary.

Prosecuting attorney to attend to all suits.

SECT. 35. In all suits in behalf of or against the board of trustees of the county seminary, or in relation to the fund aforesaid, the prosecuting attorney of the proper circuit shall attend to the interest of said trustees and fund.

Powers of the board of county commissioners to supervise.

SECT. 36. The board of county commissioners shall have jurisdiction in all matters relating to the seminaries of their respective counties, and shall take cognizance of, supervise, and inquire into the management of the seminary affairs, by any board of trustees, and shall pass such orders and decrees for the preservation and correct disposition of all funds and effects of such seminary as their discretion shall direct: and should any member of any board of trustees be guilty of any wilful or corrupt misconduct, the board of county commissioners may remove such member from office.

CHAPTER 15.

OF COMMON SCHOOLS.

ARTICLE 1. Of congressional townships, their officers, election, duties, and compensation.
ARTICLE 2. Of the school districts and their formation, of their officers, their election, and duties.
ARTICLE 3. Of the powers and duties of district trustees, clerk, and treasurer.
ARTICLE 4. Of the meetings of the inhabitants of school districts, and their powers.
ARTICLE 5. Of the manner of distributing school funds.
ARTICLE 6. Miscellaneous provisions.

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PART 1.

ARTICLE I.

Of congressional townships, their officers, election, duties, and compensation.

SECTION

1. Townships incorporated.
2. Three trustees to be elected for three years.
3. One to retire annually—to be determined by the number of votes.
4. Otherwise by lot.
5. Qualifications required.
6. Election, when and where to be held.
7. Notice of first election.
8. Notice of subsequent elections.
9. Inspector of election, how appointed; notice of same.
10. When voters may appoint inspector.
11. Rules for conducting elections.
12. Who may vote.
13. Tie vote, how determined.
14. Returns of election, when, by, and to whom made.
15. Voters failing to elect trustees, auditor to appoint.
16. Vacancies to be filled by auditor for residue of term.
17. Record of election or appointment to be made, and copy served.

SECTION

DUTIES OF TOWNSHIP OFFICERS.

18. Trustees shall appoint clerk, who to act as president.
19. Duties of clerk.
20. Trustees shall appoint a treasurer.
21. Duties of treasurer.
22. Districts, how formed and changed; maps and description thereof.
23. How to organize the same.
24. Township trustees to appoint district trustees when voters fail to elect.
25. List of children to be made and filed with auditor.
26. Townships situate in several counties, list to be furnished to auditor of each.
27. Lists, how obtained when districts fail to furnish, and how paid for.
28. Funds to be semi-annually divided and paid to districts.
29. May compensate their clerk and treasurer.

Townships incorporated.

SECTION 1. Each congressional township, as surveyed and laid off by the authority of the United States, is hereby established a township for school purposes, and the white inhabitants thereof shall be, and are hereby constituted a body politic and corporate, by the name and style of The Inhabitants of congressional township No. —, north or south, (as the case may be,) of range No. —, east or west, (as the case may be,) in — county or counties (as the case may be).

Three trustees; term of office.

SECT. 2. The business of the township shall be transacted by three trustees, who shall be elected for three years, except as is provided in the two next following sections.

One to retire each year.

SECT. 3. At the first election for trustees, of those elected, the person receiving the highest number of votes shall hold the office for three years, and until his successor is qualified; the person receiving the next highest number shall hold the office for two years, and until his successor is qualified; and the person receiving the next highest number shall hold the office for one year, and until his successor is qualified.

Term, when to be decided by lot.

SECT. 4. Should two or more of those elected have received an equal number of votes, the duration of their respective terms of office shall be determined by lot, in presence of the inspector of the election.

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ARTICLE 1.

SECT. 5. No person shall be eligible to the office of trustee unless he shall be a resident householder or a resident freeholder within the township, a citizen of the United States, and shall also have been a resident of the state for one year next preceding his election or appointment. Qualification.

SECT. 6. The election for trustees shall be held on the last Saturday of August annually, and as near the centre of the township as may be convenient. Election, when and where held.

SECT. 7. The first election in any township shall be ordered by the county commissioners, who shall fix the time and place therefor, of which the county auditor shall give notice, by posting up written or printed notices thereof, in three of the most public places in the township, at least twenty days before such election, specifying therein the object and place. First election, notice, &c.

SECT. 8. For all subsequent elections the like notice shall be given by the board of trustees through their clerk. Notice of subsequent elections.

SECT. 9. An inspector for such election shall be appointed by the county commissioners when they shall order the election; and for all subsequent elections the board of trustees shall appoint such inspector, a certified copy of which appointment shall be furnished to the inspector in due time by the clerk of the board making the appointment. Inspector of election, how appointed. Notice of his appointment.

SECT. 10. On failure to make such appointment, or of the inspector to attend as soon as two o'clock, p. m., on the day of election, or on his failure to qualify and act as such, then a majority of the voters present shall appoint an inspector in his place. When voters may appoint inspector.

SECT. 11. The time and manner of opening, conducting, and closing said election, the mode of appointing the judges and clerks thereof, and the several liabilities appertaining to them and the voters separately and collectively, shall be the same as prescribed for the general state elections, so far as applicable, subject to the provisions of this chapter, and to the delay of such election until two o'clock, p. m., under the circumstances as specified in the next preceding section. Rules for conducting election. See chap. 5, page 121.

SECT. 12. No person shall vote at such election unless he possess the qualifications of a voter at the general elections. Who may vote.

SECT. 13. In case of a tie at such elections, it shall be determined by lot, on the day of election, by the judges and inspector thereof. When a tie vote, how determined.

SECT. 14. The inspector, judges, and clerks of such election, shall, within seven days thereafter, certify to the county auditor the names of the persons elected trustees of such township, together with the determination by lot, (if made) and also deliver to him the list of votes and the tally papers. Returns of election to be made.

SECT. 15. If the voters of such township shall fail to elect at the time appointed, the county auditor shall appoint the trustees of such township, and shall determine the duration of their respective terms of office. Voters failing to elect trustees, county auditor to appoint.

SECT. 16. The county auditor shall also fill any vacancy that may occur in the office of township trustee, and the person so County auditor to fill vacancies

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for residue of any term.

appointed shall serve out the term of the trustee in whose place he was appointed.

Record of election or appointment and notice.

SECT. 17. The auditor shall enter a certificate of such election or appointment on his record book, and shall give a copy thereof to each person elected.

Duties of township officers.

To appoint clerk, who shall also preside.

SECT. 18. The township trustees shall annually appoint one of their number clerk, who shall ex officio act as president of the board; and they shall, from time to time, fill any vacancy that may occur in such office.

Duties of clerk.

SECT. 19. It shall be the duty of said clerk, 1. At the instance of either of his co-trustees, or as often as in his opinion their duties may require it, to convene the board of trustees, giving them due notice of the time and place. 2. To keep a record of the proceedings of each meeting, and sign the same, and to certify all copies. 3. To record and plat the districts as is directed in the thirty-third and thirty-sixth sections of this chapter. 4. And to do and perform such other things as shall be ordered by the trustees, or may be necessary to carry out their orders.

To appoint a treasurer.

SECT. 20. The township trustees shall annually appoint one of their own body as treasurer, and shall, as occasion may require, fill any vacancy that may occur in such office.

Duties of treasurer.

SECT. 21. It shall be the duty of the said treasurer, 1. To collect and receive all rents, profits, interest, debts, and damages belonging to his township. 2. To pay out the same in the manner herein directed, or according to the orders of the board of township trustees. 3. To keep accurate accounts of his receipts and expenditures, and to settle with the board of trustees once in each year, and oftener if required. 4. To report full and ample statements of all his transactions, and of the condition of the township funds and business, to the board of trustees once in each year, and oftener if required. 5. To do and perform all other matters and things necessary on his part to carry out the orders of the board of trustees.

Trustees shall form districts, and may alter same.

Maps, &c. to be made.

SECT. 22. The township trustees shall divide their townships into proper school districts, and shall alter and modify the same as circumstances may require, and they shall cause maps and descriptions thereof to be made, recorded, and filed, as prescribed in sections thirty-one to forty inclusive of this chapter.

Shall organize districts.

SECT. 23. They shall organize such districts when first established, by causing notice to be given by their clerk of the first general meeting for the election of trustees.

Voters failing to elect, township trustees to appoint district trustees.

SECT. 24. And if at such first meeting the voters of any district shall fail to elect trustees, or those elected, or any of them, shall fail to qualify and serve as such, the township trustees shall appoint a trustee or trustees for such district as the case may require, and fix their respective terms of service, so that the same shall conform to the rule established in section forty-three of this chapter.

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SECT. 25. The township trustees shall see that a list of the children within five and twenty-one years of age, resident within their township, is filed with the county auditor on or before the third Monday of February annually.

List of children to be made and filed with auditor.

SECT. 26. If parts of such township shall lie in different counties, lists as required in the preceding section shall be furnished to the auditor of each county, for the parts of such township lying within the same.

When parts of a township lie in several counties, lists to be furnished each.

SECT. 27. If any district shall have failed to furnish to the township clerk with the list required in the eighth clause of the sixtieth section of this chapter, within the time therein specified, the trustees of the township shall cause their clerk to make such list by himself or deputy, in time to be furnished to the county auditor, for which service they shall allow such compensation as shall be reasonable, to be paid out of the funds of such district.

When districts fail to furnish lists, how obtained.

How paid for.

SECT. 28. They shall cause the funds received into their treasury to be semi-annually divided among the districts within their township, and paid over to the district treasurers, according to the rules established in sections eighty-seven to ninety-nine, inclusive, of this chapter.

Funds to be semi-annually divided.

SECT. 29. They shall have power to allow their clerk and treasurer a reasonable compensation for any duties enjoined upon them by this chapter.

To compensate clerk and treasurer.

ARTICLE II.

Of the school districts, their formation, officers, and elections.

SECTION

30. Present districts recognized.
31. The whole of each township to be districted.
32. Districts to be made convenient.
33. Districts to be mapped and numbered.
34. Copies of such maps, where filed and kept.
35. Districts may be formed of parts of adjacent townships.
36. Township clerk to record description of districts.
37. Such record to be made in each township when district is formed out of several.
38. District may be changed on petition, &c.
39. Thirty days' public notice required of the change proposed.
40. Also personal notice to trustees of each township interested.

SECTION

41. Districts to be bodies corporate.
42. Three trustees to be elected for three years.
43. One to retire annually—to be determined by number of votes.
44. In case of a tie, by lot.
45. Election, when to be held.
46. Notice of first election, by whom to be given.
47. Judges, inspector, and clerks of first election, how appointed.
48. Rules for conducting election.
49. Return of election, when and to whom made.
50. Township clerk to record same, and give each person a certificate.
51. Vacancies, how filled.
52. Appointee, to hold for residue of term.
53. District failing to elect, township clerk shall appoint.

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PART 1.

SECTION
54. Qualifications for district trustee.
55. Rules for apportionment of property when new districts are formed out of old districts.
56. Same subject.
57. Same subject.
58. Rules for apportionment when new territory is added to an old district.
59. Same subject.

Present districts recognized.

SECT. 30. The several school districts as now established according to law, are hereby recognized and confirmed as such.

Districts to be so made as to cover whole of township.

SECT. 31. Whenever any township is not already laid off into disticts, or when the districts do not cover the whole territory of any township, the trustees thereof shall cause the same to be so districted without delay.

Districts to be convenient.

SECT. 32. The districts shall be laid off in such manner as shall be most convenient for the population and neighborhoods thereof, paying due regard to any school house already erected, districts already laid off, and other circumstances proper to be considered, so as to promote the interest of the inhabitants of the township concerned.

Township clerk to map township, and lay off and number districts thereon.

SECT. 33. The township clerk shall cause a map to be made of his township, and thereon to lay down and describe the districts therein, so marking the lines and corners that the same may be readily ascertained, and regularly numbering such districts thereon.

Copies of maps, where filed and kept.

SECT. 34. One copy of such map shall be kept in the office of such clerk, and one other copy shall, within one month after the districts are laid off, be filed by such clerk with the county auditor.

District may be formed of adjacent townships.

SECT. 35. The trustees of adjacent townships may, if convenience require it, form a district out of parts of each township.

Description of district to be recorded.

SECT. 36. An accurate description of all districts regularly numbered as on such map, shall be recorded by the township clerk.

Map and record to be made in each township in which part of a district may lie.

SECT. 37. When the district is formed of parts of several townships, the clerk of each township shall plat and record the part of such district lying within his township.

District changed on petition of majority.

SECT. 38. Any district may be subdivided or changed as convenience may require, on petition of a majority of the voters of the district.

Thirty days' public notice to be given of the proposed change.

SECT. 39. Before any such division or change shall be made, the township trustees shall be satisfied that thirty days' notice has been given, by posting the same up in three public places within the district, therein describing the boundaries of the proposed new district, or the lines proposed to be changed.

Also personal notice to trustees of each township interested.

SECT. 40. Also, that personal notice shall have been given to the trustees of all the districts to be affected by the alteration proposed.

Districts incorporated, name.

SECT. 41. Each district when organized shall be a body corporate, by the name of School District No. —— of township (or townships) No. —— in range (or ranges) No. —— in the county (or counties) of ——, in the state of Indiana.

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ARTICLE 2.

District trustees.

SECT. 42. The business of each district shall be transacted by three trustees, who shall be elected for three years, except as is provided in the two next following sections.

Term of office: one to retire annually.

SECT. 43. At the first election for trustees, of those elected, the person receiving the highest vote shall hold the office for three years, and until his successor is qualified: the person receiving the next highest vote shall hold for two years, and until his successor is qualified: and the person receiving the next highest vote shall hold for one year, and until his successor is qualified.

Lots to be drawn when a tie.

SECT. 44. Should two or more of those elected have received an equal number of votes, the duration of their respective terms of office shall be determined by lot, in the presence of the inspector of the election.

Election, when to be held.

SECT. 45. District trustees shall be elected at the regular annual meeting of the voters of the district.

Notice of first election, by whom given, and how.

SECT. 46. When trustees are first to be elected, ten days' notice of the meeting to be held therefor shall be given by the township clerk, by posting up the same in three public places in such district, and causing it to be publicly read one week before the election in each school kept in the district.

Judges, inspector, and clerk of elections.

SECT. 47. At such first election, the voters present shall, out of their own number, appoint two judges of such election, and an inspector thereof, who shall also act as clerk.

Manner of conducting elections. See sect. 11, also, ch. 5.

SECT. 48. Such elections shall be conducted in the manner prescribed for conducting elections for township trustees, except as herein otherwise directed.

Return of election, when and to whom made.

SECT. 49. Within seven days the result of such election shall be certified by the inspector, judges, and clerk thereof to the township clerk, showing the number of votes given for each person, together with the determination by lot, if any; they shall also at the same time deliver to him a list of all the voters, and the tally papers.

Township cl'k to record and give certificate.

SECT. 50. The township clerk shall enter such certificate on his record book, and thereupon give to each person elected a certificate of his election.

Vacancies, how filled.

SECT. 51. All vacancies occurring in the office of district trustee may be filled by election, at the next duly called meeting of the voters of the district, notice of the intention to fill such vacancy being given; and if not so filled, the clerk of the township shall appoint.

To hold for residue of term.

SECT. 52. In all such cases, the person elected or appointed shall hold for the residue of the term of the trustee whose place he fills, and until his successor is qualified.

District failing to elect, township clerk to appoint.

SECT. 53. When the district shall fail to elect trustees at such first election, the township clerk shall appoint the same, and designate the time each one shall serve, so that one shall retire annually, according to the rule established in section forty-three of this chapter.

Qualifications for district trustee.

SECT. 54. No person shall be elected or appointed district trustee, unless he shall be a citizen of the United States, reside

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in the district, and shall have resided in the state for one year next preceding his election.

When new district formed out of old ones, apportionment of property, how made.

SECT. 55. When a new district shall be formed from one or more districts, possessed of a school house or entitled to other property, the township trustees, if they shall deem it right and expedient so to do, shall, at the time of forming such new district, also ascertain and determine the amount justly due to such new district, from any district out of which it may have been in whole or in part formed, as the proportion due such new district of the value of the school house and other property, belonging to the former district at the time of such division.

Proportion how ascertained.

SECT. 56. Such proportion shall be ascertained according to the taxable property of the inhabitants of the respective parts of such former district at the time of the division, by the best evidence in the power of the township trustees; and deduction shall be made therein for any debts due from the former district.

Such proport'n how paid.

How appropriated.

SECT. 57. Such proportion when ascertained, shall be retained out of the public funds distributable to the district retaining the school house, or other property of the former district, unless otherwise paid, and shall be paid over to the trustees of the new district, to be applied by them towards procuring a school house for their district; and the moneys so paid to the new district shall be allowed to the credit of the inhabitants who were taken from the former district, in reduction of any tax that may be imposed for erecting a school house.

Same rules when new territory is added to an old district.

SECT. 58. In like manner, when any territory is added to an old district possessed of a school house, or entitled to other property, the township trustees, if they shall deem it right and expedient, shall ascertain and determine the amount which such new territory shall contribute to make it equal to the old territory to which it is attached.

Proportion how ascertained.

SECT. 59. The sum to be contributed shall be ascertained according to the taxable property of the inhabitants of the respective parts of the district at the time when the new territory is added, by the best evidence in the power of the township trustees; and deductions shall be made for any debts due from such old territory, and to the payment of which the new territory may thereafter have to contribute.

ARTICLE III.

Of the powers and duties of district trustees, clerk, and treasurer.

SECTION
60. 1. Shall appoint a clerk and treasurer. 2. When to meet. 3. To give notice of elections and meetings. 4. To preside at district meetings, and

SECTION 60—*Continued.*
act as inspectors of elections. 5. Keep a record of proceedings and votes of meetings. 6. Make contracts, &c. 7. Record voters and

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SECTION 60—*Continued.*
number of children. 8. To file copies thereof. 9. Audit and allow claims. 10. Pass orders for treasurer to draw funds. 11. See to working out and collection of labor tax. 12. Cause tax list, &c., to be made. 13. Make settlement with treasurer —report to meetings. 14. Determine the branches to be taught. 15. Clerk to keep books--books to be open for inspection, 16. Treasurer to receive and pay, keep books, &c.
61. Labor tax, to be collected from delinquent by suit;

SECTION
62. Or be added to duplicate and collected as taxes.
63. Money tax.—List of property and names to be made,
64. And returned to auditor.
65. Auditor to assess tax and add it to duplicate.
66. When he may require district clerk to appraise property.
67. Collection, when to be postponed to next year.
68. County treasurer to collect and settle for same--how drawn from treasury.
69. When not exceeding twenty dollars to be paid out of county treasury.

ARTICLE 3.

SECT. 60. The powers and duties of district trustees shall be,

1. To appoint one of their number clerk of the district, and one other treasurer of the district, and to re-appoint when vacancies occur. To appoint clerk and treasurer.

2. To meet on their own adjournments, or when called together by notice from any one of their number. Meetings.

3. By themselves or their clerk to give notice of all elections, and of all meetings of the voters of the district, whenever they may deem it expedient, or whenever thereto required by five voters. Give notice of elections and meetings.

4. One of the trustees shall preside at all such meetings, in the following order: 1st. The clerk, if present; 2d. If the clerk is not present, then the treasurer; 3d. If neither be present, then the remaining trustee, and shall take the vote viva voce on all questions which any voter may propose. In like order, one of said trustees shall act as inspector at all district elections. To preside at district meetings, and act as inspector of elections.

5. The person presiding shall keep a record of the proceedings and votes of all such meetings, which shall be entered on the record book of the district. Keep record of proceedings.

6. The trustees shall make all contracts, purchases, payments, and sales, necessary to carry out any vote of the district, for the procuring of any site for a school house, building, hiring, repairing, or furnishing the same, or disposing thereof, or for the keeping of any school therein: and in the absence of instructions by a district meeting, may contract with a teacher, to be paid in whole or in part out of the public funds, or by the persons sending, in due proportion, or according to their private subscriptions. To make all contracts, &c.

7. They shall keep of record a list of all the voters in the district, and of the number of children in each family, between five and twenty one years of age. Keep record of votes and number of children.

8. They shall correct such list from time to time, and prior to the first Monday in February, annually, shall cause one copy thereof to be sent to each township treasurer, and one to each To file copies thereof, where and when.

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PART 1.

township clerk of the townships in which the district or any part thereof may lie.

To audit and allow claims.

9. They shall audit and allow all just claims, whereupon said claims shall be paid by the treasurer.

To give order to treasurer to draw funds.

10. Upon their order the treasurer shall be authorized to receive from the county auditor warrants on the school commissioner and county treasurer, for all such funds as the district shall be entitled to.

To see to working out and collection of tax.

11. When any tax is voted to be paid in labor, the trustees shall see to the working out of the same, and the collection thereof from delinquents, as hereinafter directed.

To cause tax list and assessments.

12. When any money tax is voted, they shall cause their clerk to prepare the list and assessment as hereinafter directed.

To make settlements with treasurer—make reports to meetings.

13. They shall, from time to time, examine the books and accounts of their treasurer, and make settlement with him; and at the regular annual meeting, present to the same a full statement of the receipts and expenditures of the year, of the number of children that have attended school, and the time taught, and all such other matters as shall be important to the district.

To determine course of tuition.

14. To determine what branches shall be taught in their district school, provided the branches taught are such as are generally taught in common schools.

Clerk to keep books, &c.—same to be open to inspection.

15. The clerk shall keep the books and papers of the trustees, and the same, as well as those of the treasurer, shall be open to the inspection of the trustees at all times.

Treasurer to receive and pay out money, keep books, &c

16. All district money shall be paid to the treasurer, and paid out on orders drawn upon him, certified by the clerk, of all which he shall keep proper books of account.

Labor tax may be collected from delinqu't by suit.

SECT. 61. When any person charged with a tax, payable in labor, shall fail to discharge the same after two weeks' notice to comply with the requisition, suit may be brought therefor by the district treasurer, and a recovery had at the rate, if any, established for commutation, if not, at the rate of seventy-five cents per day.

Or added to county duplicate.

SECT. 62. Or the names of delinquents may be returned to the county auditor, and be added to and collected with the duplicate of state and county revenue, as hereinafter is provided for the collection of other district taxes.

Money tax, how proceeded with—list of property and names to be made:

SECT. 63. When any money tax is required, the clerk shall make a list of all the taxable property within the district, together with the names of the owners, leaving therefrom the names of all negroes and mulattoes.

And returned to county auditor.

SECT. 64. The same, together with the votes of the meeting directing the sums to be levied, the clerk shall file with the county auditor.

Auditor to assess and add same to duplicate.

SECT. 65. The auditor shall make the proper assessment thereof upon the property chargeable, in the same manner as for state and county revenue, according to the regular appraisement thereof in his office, and shall add the same in a proper column to the duplicate of the current year.

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SECT. 66. If the auditor shall be unable to ascertain the value of any property returned on such list, by an inspection of the regular appraisements made by the county assessor, he shall cause the same to be appraised, and a return thereof to be made to him by the proper district clerk. When he may require district clerk to appraise.

SECT. 67. But if such duplicate shall have been delivered to the treasurer for collection before such list is filed with the auditor, then the assessment of such district tax shall be made and added to the duplicate of the next year. Collection, when to be postponed to next year.

SECT. 68. They county treasurer shall collect and settle for the said taxes at the same time and in the same manner as for other taxes; and the amount, after deducting the treasurer's per centage and all delinquencies, shall be drawn from the treasury on the warrant of the auditor. County treasurer to collect and settle for same. How drawn from treasury.

SECT. 69. If such tax shall not exceed twenty dollars, the same shall be advanced out of the county treasury, and the amount collected for the benefit of the county. When not exceeding $20, to be paid out of county treasury.

ARTICLE IV.

Of the meetings of the inhabitants of school districts, and their powers.

SECTION
70. General meeting of voters first Saturday in October.
71. Special meetings, how called.
72. Meetings not illegal for want of notice if no fraud.
73. Who may vote.
74. Meetings shall have power, 1. When to make a chairman. 2. Adjourn. 3. Elect trustees and fill vacancies. 4. Designate site for school house. 5. Vote the building, furnishing, &c., of school house. 6. Vote sale of same. 7. Fix term of school and mode of payment. 8. Appropriate funds for site or for building. 9. Allow compensation to clerk or treasurer. 10. Assess amount of labor tax, 11. And commutation thereof.
75. Officer presiding shall keep record of votes, &c., of meeting.
76. Tax limited to one fourth of one per cent.

SECT. 70. A general meeting of the voters of each district shall be held on the first Saturday of October. General meeting, when to be held.

SECT. 71. Special meetings of the voters of any district may be held on notice given by the district trustees or their clerk. Special meetings, when.

SECT. 72. Such meetings shall not be illegal for want of due notice, unless it shall appear that the omission to give such notice was wilful and fraudulent. Meetings when illegal for want of notice.

SECT. 73. No person shall vote at such meetings unless he shall be a freeholder resident within such district; or being such resident, shall be a householder and have children to school within such district. Who may vote.

SECT. 74. Whenever lawfully assembled, the voters shall have power, Powers of such meetings.

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PART 1.

Appoint a chairman.
Adjourn.
Elect trustees and fill vacancies.
To designate site for school house.
To vote the building, furnishing, &c. of school house.
To vote sale of same.
To fix term of school, and mode of payment.
To appropriate funds for site or building.
To allow compensation to clerk or treasurer.
To assess amount of labor tax.
To fix commutation thereof.
A record of proceedings to be made.
Tax limited to one-fourth per cent.

1. In the absence of all the district trustees, to appoint a chairman who shall also act as clerk of the meeting.

2. To adjourn from time to time, as occasion may require.

3. At the regular annual meeting to elect district trustees, and at the same or any special meeting to fill vacancies, notice thereof having been given.

4. At the same or any special meeting, to designate a site for a school house.

5. To direct the building, hiring, or purchase of a school house, or site for the same, and to fix the sum to be expended therefor, or for the furniture and appendages thereto, or for a school library or apparatus, and for the keeping of the same in repair.

6. To direct the sale of any school house or the site thereof, and of such other property, real or personal, as may belong to the district.

7. To determine the length of time, not less than three months, during which a school shall be kept, and the manner in which the teacher shall be paid.

8. May direct that all or a part of their distributive share of the school funds may be applied to the purchase of a site for a school house, or the building thereof.

9. May allow the district clerk and treasurer a compensation for their services.

10. To determine the amount of work to be done by each able bodied white male resident of the district, between the ages of twenty-one and fifty years, towards building a school house, not to exceed two days' work for each.

11. To determine the amount in money at which each person may commute such tax.

SECT. 75. A record of all the votes taken, and proceedings had at such meetings, shall be entered by the person presiding, in the book wherein is kept the proceedings of the district trustees.

SECT. 76. No property shall be assessed with more than twenty-five cents on each one hundred dollars in any one year for a school tax.

ARTICLE V.

Of the manner of distributing school funds.

SECTION
77. Surplus revenue income to be divided in March and September by county auditor.
78. How paid over to township.
79. Not to be paid unless certain reports are furnished.
80. Reports, if made, when to save subsequent payment.
81. Money received to be expended before any more can be drawn.
82. When part is expended, how much shall be retained.
83. Sums retained to be distributed at next payment.
84. When townships are in several counties, portions of fund, how drawn.

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SECTION
85. Township fund to be divided and paid in March and September.
86. How drawn from school commissioner.

PAYMENTS FROM TOWNSHIP TREASURY.

87. Funds in township treasury, how and when distributed.
88. Distinction to be maintained between surplus revenue and other funds.
89. How drawn from township treasury.
90. Not to be drawn unless certain reports have been made.
91. If made afterwards to save subsequent payments.
92. Money to be expended before more is drawn.
93. When part expended, how much to be drawn.
94. Sums so retained to be distributed at next payment.
95. Districts divided by township, funds how distributed.

WEAK DISTRICTS.

96. Funds of feeble districts to be retained,
97. And loaned out until, &c.
98. Such district failing to support a school after, &c., sums retained to be distributed.
99. Deductions for those who send to other districts or support private schools.

SECTION

PAYMENTS FROM DISTRICT TREASURY.

100. Payments from district treasury, how made.
101. Public funds insufficient for entire support of school, to be apportioned equally.
102. School to be open to all while public fund is expending.
103. Benefit of funds limited to residents.
104. Transient persons deemed non-residents.
105. Deficiency in support of school to be paid by those sending.
106. Persons over age and non-residents, when may be admitted to school.
107. Record of scholars and of time sent to be kept by teacher; same to be open to inspection; to be evidence when sworn to by teacher.
108. Abstracts therefrom, and their contents.
109. Payments to teacher restricted until abstract is furnished.
110. Tuition bills how collected.
111. Inhabitant of unorganized district may send to an adjoining one.
112. And draw his share of funds or have it applied to his tuition bill.
113. When no school in organized district, may send to an adjoining one.
114. Also when school is inconvenient.
115. When fund may be applied to private school.
116. Same to cease when public school is commenced.

SECT. 77. The interest arising from the surplus revenue fund loaned in each county shall, by the county auditor, on the first Mondays of March and September annually, be divided among the different townships within such county, in proportion to the number of children within such townships, between the ages of five and twenty-one years, as returned under the twenty-fifth section of this chapter.

Surplus revenue income, how and when divided by county auditor.

SECT. 78. The sum so found due to any township shall be paid on the warrant of the county auditor, granted upon the order of the trustees of the township, certified by their clerk.

How paid over to township.

SECT. 79. No such warrant shall be granted in behalf of any township, unless the trustees thereof shall have duly furnished the list required in the twenty-fifth section of this chapter.

No warrant to be granted therefor unless lists have been furnished.

SECT. 80. But if any township, failing to make return at the time specified in the preceding section, shall make the same within one week before the September dividend, it shall be entitled to its share thereof.

Report may be subsequently made.

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PART 1.

Money to be expended before more is drawn.

SECT. 81. No second or future dividend of the surplus revenue fund shall be drawn for by the county auditor in behalf of any township, unless it shall be made to appear to him, from the reports furnished by the township trustees thereof, that the sums already drawn have been fully and faithfully expended for school purposes within such township.

If part only is expended.

SECT. 82. If only a part shall remain unexpended, the auditor shall deduct the same from the amount of dividend due such township, and draw his warrant for the balance only.

Sums so retained to be distributed, when.

SECT. 83. The sums retained in the county treasury, under the operation of the two preceding sections of this chapter, shall be added to the sum to be distributed among the townships at the next semi-annual dividend.

When townships lie in several counties, portions of fund how drawn.

SECT. 84. Where townships are divided by county lines, the trustees thereof shall be allowed to draw from the treasurers of the counties wherein the same may lie, such portions of the surplus revenue fund as the respective parts of such townships shall be entitled to under the rules aforesaid.

Township school fund, how and when divided.

SECT. 85. The sum due to any township for interest received on its common school fund loaned by the school commissioner, shall be paid semi-annually, calculating the same up to the first Mondays of March and September.

How drawn from school commissioner.

SECT. 86. For the same the auditor shall draw his warrant on the school commissioner in favor of the township treasurer, such warrant to be granted on the order of the board of trustees of the proper township, certified by the clerk.

Payments from township treasury.

Funds in township treasury, how and when divided.

SECT. 87. The sums received for school purposes from the county treasurer, the school commissioner, or from rents of school lands or otherwise, shall, by the trustees of the township, between the first and second Mondays of March and September annually, be divided among the several districts in their township in proportion to the number of children in each between five and twenty-one years of age.

Distinction between surplus revenue and other funds.

SECT. 88. In making such distribution, the proper distinction shall be made between the sums derived from the surplus revenue fund and those derived from the township funds, so that the distribution of the former shall be confined to the territory of the county from whose fund the money was obtained.

How drawn from treasury.

SECT. 89. The sum due to any district shall be paid to the treasurer thereof, upon the order of the township clerk, granted upon the order of the district trustees, certified by their clerk, directing the treasurer to draw the same.

Not to be drawn unless reports have been made.

SECT. 90. The township clerk shall not grant such order unless the trustees of the district applying shall have furnished such clerk, before the first Monday of February, with a list of all the voters of such district, and of the children therein between five and twenty-one years of age, as specified in the eighth clause of the sixtieth section of this chapter.

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ARTICLE 5.

SECT. 91. But if such failing district shall furnish such list one month before the September dividend, it shall be entitled to its share thereof. Reports may be subsequently furnished.

SECT. 92. No second or future dividend of any such school moneys shall be drawn for by the township clerk in behalf of any district, unless it shall be made to appear to him, from the reports furnished by the district trustees, that the sums already drawn have been fully and faithfully expended for school purposes within such district. Money to be expended before more is drawn.

SECT. 93. If a part only shall remain unexpended, the township clerk shall deduct the same from the amount of dividends due such district, and draw his order for the balance only. If part remains unexpended.

SECT. 94. The sums retained in the township treasury under the operation of the two preceding sections, shall be added to the sum to be distributed among the districts at the next semi-annual dividend. Sums so retained to be added to next dividend.

SECT. 95. When districts are divided by township lines, the trustees thereof shall be allowed to draw from the treasuries of the townships wherein the same may lie, such portions of the school funds as the respective parts of such district shall be entitled to under the rules aforesaid. When districts lie in several townships.

Weak districts.

SECT. 96. The township trustees shall cause an account to be opened with each district, in which the number of children between the ages of five and twenty-one years does not amount to twenty-five, and in which no district school is kept, and shall give it credit for its due proportion of the public fund coming to such township for distribution, for each year, and until one year after the number of children therein amounts to twenty-five. Account to be opened with feeble districts and fund retained.

SECT. 97. The funds so belonging to such district shall be returned to the school commissioner and be loaned out for one year at a time, as other school funds are loaned, until the same shall be demanded by such district for building or purchasing a school house, or for the support of a district school. Money so retained to be loaned out until, &c..

SECT. 98. But if such district shall fail for one year after the number of children therein of the proper age shall be over twenty-five, to support a district school for at least three months, the sum so loaned, with its interest, shall, at the next distribution thereafter, be added to the sum to be divided among the other districts or persons within the township entitled thereto. Such district failing to support a school after, &c.; sum retained to be distributed.

SECT. 99. From the sums thus reserved for accumulation shall be deducted the amount paid to persons sending to other districts or supporting a private school, as provided for in sections numbered one hundred and eleven to one hundred and fifteen, inclusive, of this chapter. Deductions to be made therefrom.

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PART 1.

Payments from district treasury, how made.

SECT. 100. The payments from the district treasury of the public school funds, shall be made on the order of the district trustees, certified by the clerk.

Public funds, when insufficient, to be apportioned equally.

SECT. 101. If the public funds and taxes shall be insufficient to pay the sum due for tuition, the same shall be so divided among the persons entitled to distribution, that each person sending to school shall receive credit for his fair proportion of such funds, according to the number of pupils and time sent.

School to be open to all while public fund is expending.

SECT. 102. When any school is supported in any degree by the public school funds or by taxation, so long as the money so derived shall be expending thereon, such school shall be open and free to all the white children resident within the district, over five and under twenty-one years of age.

Benefits limited to residents.

SECT. 103. The right to any portion of the school funds shall be confined to persons who are residents of this state.

Transient persons deemed non-residents.

SECT. 104. Persons who may temporarily take boarding in any district or township for the purpose of attending or sending to a school therein, shall, as to the privileges thereof, be deemed non-residents.

Deficiency in support of school, to be paid by persons sending.

SECT. 105. If the public school fund remaining to be expended for tuition, and the tax that may have been collected for the same purpose, shall not be sufficient to pay for the term for which a school has been ordered to be kept, the residue, if not raised by voluntary subscription, shall be paid by those sending to such school in proportion to the number of scholars respectively sent, and the time they shall attend the same, after the amount of school funds and taxes shall be exhausted.

Persons over age and non-residents, when admitted to school.

SECT. 106. The district trustees may admit to the benefits of such schools persons over the age of twenty-one years, and youths from other districts, on payment of such sum as the trustees shall prescribe.

Record of scholars and time sent, to be kept by teacher

SECT. 107. The teacher of each district school shall enter in a book to be provided by the district clerk, the names of all the children attending school, their ages, the date when they commenced, the length of time they continue, with a table showing their daily attendance; also the names of the parents or guardians of such children, distinguishing those who may reside without the district. Such book shall be open at all times to the inspection of all persons interested, and be delivered over by the teacher to the district clerk at the expiration of the term of the school; and when the account so kept therein shall be sworn to by the teacher, the same shall be prima facie evidence of the attendance of scholars as therein contained.

Same to be open to inspection.

When sworn to by teacher to be evidence.

Abstracts therefrom to be made, and their contents.

SECT. 108. As often as once in three months, the teacher shall make an abstract of the entries in said book, showing the whole number of pupils enrolled, and the average daily attendance; distinguishing the number of males and females; and deposit the same with the clerk of the district.

Payment of teacher restricted until

SECT. 109. It shall not be lawful to pay any teacher more than two thirds of the amount due him for any term of tuition

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until said abstract shall be placed in the hands of the district clerk as aforesaid.

abstract is furnished.

SECT. 110. The district trustees shall cause the accounts for tuition to be made out against each individual liable therefor; and if not paid voluntarily, the same shall be sued for by the trustees or teacher, according to the contract made with him, or be returned to the county auditor and be added to the tax duplicate for the current year, and collected and accounted for in the manner provided for the collection of and accounting for the taxes voted by the district.

Tuition accounts how collected.

SECT. 111. Any inhabitant of an unorganized district may send to any district school in an adjoining district, having first obtained the consent thereto of the trustees of his township, and of the trustees of the district to which he desires to send.

When inhabitant of unorganized district may send to an adjoining district.

SECT. 112. Upon the production of the teacher's certificate duly sworn to, or a copy of the return made by him as herein previously required, certified by the district clerk, showing the number of children sent by such person and the number of days sent, the township trustees shall pay to such person his fair share of the public funds that he would have been entitled to if his district had been organized; or they shall cause the same to be paid to the teacher or district treasurer to whom it may be due, if such person himself shall not have paid for such tuition.

How he may draw his share of funds, or may be paid to teacher or treasurer.

SECT. 113. In like manner and with the like consent any inhabitant of a district in which there is no school, may send to an adjoining district and receive the like benefit from the public funds.

Inhabitant of district where no school may send to adjoining district.

SECT. 114. In like manner and with the like consent any inhabitant who is so situated as to render it inconvenient to send to the school of his district, may send to an adjoining district, and receive the like benefit from the public funds.

So when his own school is inconvenient.

SECT. 115. In like manner the inhabitants of any unorganized district, or of any district in which there is no school who may, with the consent of their township trustees, if any, establish a private school, shall receive like benefits of the public funds as is provided in the preceding sections, number one hundred and eleven and one hundred and twelve.

So when private school is supported.

SECT. 116. But the right of such inhabitants to draw from the public funds shall cease at the end of any current quarter, whenever any district school shall be commenced within such district.

Right to cease when public school is commenced.

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ARTICLE VI.

Miscellaneous provisions.

SECTION
117. Oath of trustee, &c.
118. Books of township and district trustees, clerk and treasurer to be open to inspection of, &c.
119. Officers may be required to appear and produce same.
120. In case of fraud, books to be corrected, and officer removed.
121. List of voters to be furnished to any who demand it.
122. Township treasurer's bond.
123. District treasurer's bond.
124. Bonds where recorded—copies evidence.
125. Evidence of official character, what sufficient.
126. Process against township, what, and how served.
127. All suits to be in name of the state.
128. Prosecuting attorney, when to attend to the same.
129. Appeals from trustees of district, when allowed.
130. Appeals from township trustees, when allowed.

SECTION
131. Appeals from county auditor, when allowed.
132. No cost in suit brought where appeal might have been had.

EXAMINERS.
133. Examiners of teachers, how appointed.
134. Their duty.
135. Teacher to be of good moral character—certificate required before payment.

SUPERINTENDENT OF COMMON SCHOOLS.
136. His duties.
137. May require certain reports and information.
138. Shall prepare forms and instructions and transmit same.
139. Shall print and distribute law, &c.
140. Expenses incurred, how paid.
141. Treasurer of state to perform duties.
142. Certain counties exempted from the provisions of this chapter.

Oath of trustee, &c.

SECT. 117. Each township and district trustee, clerk, and treasurer shall, before he enters upon the duties of his office, take an oath faithfully to discharge the same to the best of his ability.

Books of township and district trustees, clerk, and treasurer to be open to inspection of, &c.

SECT. 118. The books, papers, and accounts of any township or district trustee, or board of trustees, or township clerk, or treasurer, shall be subject to the inspection of the county auditor, or of the board of county commissioners of the county, having jurisdiction over the funds of such township.

May be required to appear and produce same.

SECT. 119. For the purpose of such inspection, said board of county commissioners shall have power, by subpœna, to compel the attendance before them of any such trustee or trustees, clerk or treasurer, and the production of such books, three days' notice of the time to appear or produce being given.

In case of fraud, proceedings.

SECT. 120. If such books have been improperly kept, said board shall have power to correct them; and if any fraud shall appear, said board shall remove the person guilty thereof, and order a new election to fill the vacancy until the next annual election.

List of voters may be demanded by any person.

SECT. 121. The township clerk shall give a certified list of voters in any district to any person asking the same, on the tender to him of ten cents for each district.

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ARTICLE 6.

Township treasurer's bond.

SECT. 122. Each township treasurer shall give bond with penalty and security, as near as may be, to double the amount that may from time to time come into his hands, conditioned for the faithful discharge of the duties of his office, and the payment or delivery over to the persons entitled thereto, whether his successor or otherwise, of all money, books, papers, and property, in his hands as such treasurer; such bond to be approved by and filed with the county auditor.

District treasurer's bond.

SECT. 123. Like bond and security shall be given by the district treasurer, to be approved by and filed with the township clerk.

Bonds to be recorded, &c.—copies evidence

SECT. 124. Such bonds shall be preserved and recorded by the officers with whom filed; and copies of such bonds, certified by any such officer, shall be prima facie evidence, without the production of the original.

What evidence of official character sufficient

SECT. 125. In all suits wherein the official character of any township or district trustee, clerk, or treasurer, shall be in question, proof of any person claiming to be such officer having exercised the duties of any such office shall be prima facie evidence of his right to the same.

Process against district, or township, what, and how served.

SECT. 126. The process in all suits against any school district or congressional township shall be by summons, and shall be executed by leaving a copy thereof with the treasurer of the district or township, ten days before the return day thereof.

Suits to be in name of state.

SECT. 127. All suits brought on behalf of any school district or congressional township shall be brought in the name of the state of Indiana, for the use of such district or township.

Prosecuting attorney, when to attend to suits.

SECT. 128. When any suit on behalf of or against any such district or township, shall be entered in the circuit or supreme court, the prosecuting attorney of the proper circuit shall attend to the prosecution or defence thereof, on behalf of such district or township, as a part of his official duties.

Appeal allowed from trustees of district.

SECT. 129. Any person conceiving himself aggrieved in consequence of any decision made or act done,

1. By any school district meeting,

2. By the trustees of any district, or the refusal of such trustees to do any act, or perform any duty required by law,

May appeal to the trustees of the township, whose decision therein, after a hearing of the parties, shall be final, unless appealed from, as in the next succeeding section is provided.

Appeal allowed from township trustees, clerk, and treasurer.

SECT. 130. The trustees of any school district, or any other persons conceiving themselves aggrieved in consequence of any decision made or act done, or the refusal to do any act or perform any duty required by law by the trustees of any township, their clerk or treasurer, may appeal to the county auditor, whose decision therein, after a hearing of the parties, shall be final, unless appealed from, as in the next succeeding section is provided.

Appeal allowed from county auditor to superintendent of

SECT. 131. The trustees of any township or district, or any other persons conceiving themselves aggrieved in consequence of any decision made or act done, or the refusal to do any act,

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PART 1. common schools.

or perform any duty required in this chapter, by the county auditor, may appeal to the superintendent of common schools, whose decision therein, after a hearing of the parties, shall be final.

No costs in suit brought for any cause for which an appeal may be had.

SECT. 132. If any person shall sue for or on account of any act done, decision made, or refusal to do any act or perform any duty, by any officer in this chapter named, for which he might have had an appeal, according to the provisions of any of the three preceding sections, such person shall not be allowed to recover any costs in such action.

Examiners of teachers to be appointed.

SECT. 133. The circuit court of each county shall appoint three suitable persons as examiners of common school teachers, who shall continue in office until others are appointed in their place.

Their duty.

SECT. 134. Such examiners shall examine such persons as may apply for that purpose, and certify what branches they are qualified to teach.

Good character required of teacher—not to be paid if unqualified.

SECT. 135. No teacher shall be employed unless he is a person of good moral character, nor shall any teacher be paid as a teacher of a district school, without having procured a certificate of qualifications, as provided in the next preceding section.

Superintendent of common schools.

His duties.

SECT. 136. There shall be a superintendent of common schools, whose duty, amongst other things, it shall be to prepare and submit to the general assembly an annual report, containing,

1. A statement of the condition and amount of all funds and property appropriated to purposes of education.

2. A statement of the condition of the state university and other incorporated colleges and academies in this state, the number of students, their age, sex, and the branches taught.

3. A statement of the condition of county seminaries, their funds, expenditures, number of students, their age, sex, and the branches taught.

4. A statement of the number and condition of the common schools, both public and private, in the state, number of scholars, their age, sex, and the branches taught.

5. Estimates and accounts of expenditures of the public school moneys.

6. Plans for the management and improvement of the common school fund, and for the better organization of common schools.

7. And all such matters relating to his office, to common schools, and the cause of education, as he shall deem expedient to communicate.

May require reports, from whom.

SECT. 137. The superintendent shall have power to require of county auditors, school commissioners, township trustees, clerks, and treasurers, and district trustees, clerks, and treasurers, copies of all reports by them required to be made, and

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all such other information in relation to the duties of their respective offices, and the condition of the funds and property of county seminaries and district schools, and the condition and management of such schools and seminaries as he may deem important.

Shall prepare forms.

SECT. 138. The superintendent shall prepare suitable forms and regulations for making all reports and conducting all necessary proceedings under this chapter; and shall cause the same, with such instructions as he shall deem necessary and proper for the better organization and government of common schools and county seminaries, to be transmitted to the officers required to execute the provisions of this chapter throughout the state.

Print and distribute copies.

SECT. 139. He shall cause as many copies of this article, with the forms, regulations, and instructions prepared by him thereto annexed, to be from time to time printed and distributed amongst the school districts of the state, as he shall deem the public good to require.

Expense, how paid.

SECT. 140. All moneys reasonably expended by him in the execution of his duties, shall, upon due proof, be allowed by the auditor of public accounts, and be paid out of the treasury.

Treasurer of state to act as superintend'nt.

SECT. 141. The duties of superintendent of common schools shall be performed by the treasurer of state, as a part of the duties of his office.

Certain counties excepted from this law.

SECT. 142. The counties of Clark and Scott are excepted from the provisions of this chapter, and the former law is hereby declared to be and remain in full force in said counties.

CHAPTER 16.

OF HIGHWAYS AND BRIDGES.

ARTICLE 1. Of the laying out and establishing of highways—change and vacation thereof.
ARTICLE 2. Of the erection of bridges.
ARTICLE 3. Of the officers entrusted with the care and superintendence of highways and bridges, and their general powers and duties.
ARTICLE 4. Of the persons liable to work on highways, the making assessment therefor, and the collecting or working out of the same.
ARTICLE 5. Of the performance of labor on highways.
ARTICLE 6. Miscellaneous provisions.

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PART 1.

ARTICLE I.

Of the laying out and establishing of highways—change and vacation thereof.

SECTION
1. Application therefor to be by petition. 1. State road, where. 2. County road, where.
2. Requisites of petition for a state road.
3. Notice of application to be given.
4. Proof required of contents of petition and notice being given.
5. Duty of commissioners.
6. Vacancies, how supplied.
7. Compensation.
8. May employ surveyor and assistants —compensation.
9. To report—contents—where filed and record—to be publicly read.
10. Like proceedings on applications for a change or vacation.
11. Requisites of petition for location or change by county commissioners.
12. Notice and proof thereof.
13. Proceedings of board—viewers.
14. Duty of viewers—their oath—when not to run through an old enclosure.
15. Notice to occupants and owners of land.
16. Report—its contents—proceedings thereon.
17. If no objection, road to be opened.
18. Owner objecting, reviewers to be appointed.
19. Their oath, duties, and report.
20. Damages awarded and costs to be paid by county. Otherwise, costs by objector.—Damages being paid, road opened.
21. Damages unreasonable, view may be set aside.
22. On objection for not being useful, review to be ordered.
23. Road reported not useful, petitioners must open and pay costs—if useful, objectors to pay costs.
24. Road not to be opened until damages are paid.
25 Private roads, how applied for—view.
26. Duty of viewers—notice.

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27. When a common road, petitioners to open.
28. Owner objecting, damages to be assessed.
29. Swinging gates may be placed thereon.
30. Width of public and private roads.
31. Road on county line how opened and repaired.
32. Owner desiring to enclose, may turn road.
33. Viewers and their duties.
34. Notice of application and view required.
35. Proceedings on report.—New road to be made good before vacation.
36. Petition for vacation of useless roads —requisites.
37. Proceedings thereon.
38. Same.
39. On objection made, viewers to be appointed.
40. Roads may be changed on petition of twelve freeholders or twenty-four householders.
41. Notice and proof required.
42. Report required as to utility.
43. If favorable, and new road made good, old road to be vacated—expense paid by county.
44. If unfavorable, petitioners to pay costs.
45. When alteration may extend to another county.
46. Petition, notice, and proceedings.
47. 1. In what county to be filed. 2. Forty days' notice. 3. Copies sent to other counties. 4. Commissioners to appoint viewers. 5. Time and place of their meeting. 6. Notice by sheriff. 7. Reports and proceedings thereon. 8. Expenses, how audited and paid.
48. Expenses, how apportioned among counties.
49. Remonstrance may be made.
50. Sixty days' notice to be given.
51. Not between 1st April and 1st November.

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52. Owner, how compensated.
53. When supervisor shall remove fence.
54. Six years non-user to vacate road.
55. Recorded road and roads used for twenty years recognized.
SECTION
56. Appeal from county commissioners to circuit court.
57. Which circuit court to have jurisdiction when proceedings are in several counties.

ARTICLE 1.

Application for location, change, or vacation, by petition.

SECTION 1. Application for the location, change, or vacation of highways shall be by petition,

State roads, where.

1. For those running through more than one county, to the legislature;

County roads, where.

2. For those confined to one county, to the board of county commissioners.

Requisites of petition for state road.

SECT. 2. All such petitions addressed to the state legislature shall be signed by at least twenty-four freeholders of each county in which the highway mentioned in such petition is proposed to run, twelve of whom shall be of the immediate vicinity thereof, and shall state the beginning, course, and termination of the highway proposed to be located or vacated, or of the change desired to be made.

Notice of application.

SECT. 3. Notice of such intended application to the state legislature shall be given, by written notices posted up in three public places in each county, in the vicinity of the highway proposed to be located, changed, or vacated, at least twenty days before such petition shall be presented; but the publication of the same in a newspaper in any county shall dispense with the necessity of the written notices in such county.

Proof of contents of petition and notice.

SECT. 4. The affidavit of any person competent to testify, taken before any officer authorized to administer oaths, to the effect that such petition contains the requisite number of signers possessing the proper qualifications, and that the notice required has been duly given, shall be taken as sufficient evidence thereof.

Duty of commissioners, when appointed by general assembly.

SECT. 5. Whenever the legislature shall appoint commissioners to view, mark, and locate any highway, it shall be the duty of said commissioners to meet at the time and place designated by the law authorizing such location; and after having been duly qualified by oath or affirmation faithfully and impartially to discharge their duties, shall proceed to view, mark, and locate the highway for which they may have been appointed such commissioners.

Vacancies, how filled.

SECT. 6. In case any such commissioner shall die, resign, or refuse to act, it shall be the duty of the board of county commissioners in the county where such death, resignation, or refusal to act shall have taken place, to appoint some suitable person or persons to fill the vacancy or vacancies thereby occasioned.

Compensation.

SECT. 7. Each such commissioner shall receive the sum of one dollar for his services for every day he may be necessarily employed in locating any such highway, to be allowed by the board of county commissioners in proportion to the distance which the same may run through each and every county, and to be paid out of the county treasuries of the respective counties.

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May employ surveyor, &c.; their compensation.

SECT. 8. Such commissioners may employ a surveyor, chainmen, and markers, should they deem the same expedient in the location of such highway; and the surveyor, chainmen, and markers, shall severally receive and be paid a reasonable compensation for their respective services, to be allowed and paid in like manner.

Report, contents, where filed.

SECT. 9. It shall be the duty of said commissioners to make their return, or report of their proceedings, within thirty days after the location of any such highway, giving the route and bounds thereof, and its course and distance, and cause the same to be filed with the auditors of the several counties through which the said highway shall have been located; and it shall be the duty of said auditors, within twenty days thereafter, to record the said report in the record book of the county commissioners, and the same shall be publicly read at the next session of said board.

Record to be publicly read.

Like proceeding for change or vacation.

SECT. 10. Like proceedings shall be had, as near as may be, in all cases where commissioners are appointed by the general assembly to change or vacate any highway.

Requisites of petition for location, &c. of highways by county board.

SECT. 11. All petitions to the board of county commissioners for new highways shall be signed by at least twelve freeholders of the township or townships in which such highway is desired, three of whom shall be of the immediate neighborhood, therein specifying the proposed beginning, course, and termination thereof, together with the names of the owners and occupants of the land through which the same may pass.

Notice and proof thereof.

SECT. 12. Like notice of each intended application shall be given in said township or townships, and proof thereof made as specified in sections three and four of this chapter.

Proceedings of board.

SECT. 13. The said board, when the petition is presented, shall cause the same to be publicly read; and upon proof of notice as above, shall appoint three disinterested freeholders of the county as viewers of such highway.

Proceedings of viewers.

SECT. 14. The said viewers, or a majority of them, having taken an oath or affirmation faithfully and impartially to discharge their duties, shall proceed to view the route proposed; and if they deem it of public utility, shall lay out and mark such highway, on the best ground that can be obtained, not running through any person's enclosure of one year's standing, without the owner's consent, unless a good way cannot otherwise be had.

When not to run through old enclosure.

Notice to occupants and owners of land—of laying out.

SECT. 15. The county commissioners shall require that notice of the laying out of any state or county highway, shall be given to the occupants of the land through which the same may be laid, and to the owners thereof, if known, or to their agents or attorneys, if residents of the county; which notice may be given by said commissioners or viewers, when convenient to do so, otherwise by the petitioners for such road.

Report and proceedings thereon.

SECT. 16. The said viewers, or a majority of them, shall certify a copy of their proceedings to the ensuing session of the board, describing therein the highway so laid out by routes and

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bounds, and by its course and distance; and the same shall be publicly read before said board.

No objection, road to be opened.

SECT. 17. If no objection be made to such proposed state or county highway, the said board shall cause a record thereof to be made, and order the highway to be opened and repaired.

Reviews, if objection is made by the owner.

SECT. 18. If any person through whose land the same may run shall feel aggrieved thereby, such person may at any time before final action of the board thereon, set forth the grievance by way of remonstrance; and the said board shall thereupon appoint three disinterested freeholders, and assign a day and place for them to meet.

Oath and proceedings of reviewers.

SECT. 19. The said freeholders, having had five days' notice from either of the parties, shall meet and take an oath or affirmation faithfully and impartially to discharge the duties assigned: they shall then, or on any other day prior to the next session to which the majority may adjourn, proceed to review the proposed highway, and assess the damages, if any, which such objector or objectors will sustain from the same being opened and continued through his, her, or their lands, and shall report the same to the ensuing session of the board.

Report.

If damages are given, same and costs to be paid out of co. treasury.

SECT. 20. If the majority of the viewers assess and report damages in favor of the objector or objectors, and the board shall consider the proposed highway or change to be of sufficient importance to the public, they shall order the costs and damages to be paid out of the county treasury; but if the majority report against the claim for damages, the objector or objectors shall pay the costs; and when payment of damages is made, the highway shall be opened and recorded.

Otherwise, objector to pay costs.

Road, when opened.

Review may be set aside.

SECT. 21. If in the opinion of the board, the damages assessed are unreasonable, they may set such view aside, and order a review, if they think best.

Objection being made for want of utility, review may be had.

SECT. 22. If any freeholder of any township or townships through which the proposed highway may run shall object to the same, at the time and in the manner aforesaid, as not of public utility, other viewers shall be appointed, who shall proceed as before directed.

If report is against utility, petitioners must open road and pay costs. If otherwise, the objector shall pay costs, and road be opened.

SECT. 23. If the majority of said viewers report against the utility of the highway, the same shall not be established, unless the petitioners will open and maintain the same at their own expense; and the petitioners shall pay the costs that shall have accrued: but if they report favorably thereto, the objectors shall pay the costs of the review, and the highway shall be opened and recorded.

Not to be used until damages are paid.

SECT. 24. No highway shall be opened, worked, or used until the damages assessed therefor shall be paid to the persons entitled thereto, or deposited in the county treasury for their use, or they shall give their consent in writing, filed with the auditor.

Private roads, how applied for.

SECT. 25. Any person, for his convenience, may have a private road laid out from or to any plantation, dwelling house, or public highway, on petitioning the proper board, having ad-

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vertised his intention as hereinbefore required, which board shall cause the same to be publicly read, and if they think proper, order a view of the same.

View ordered.

Proceedings as in other cases.

SECT. 26. The viewers shall be sworn, and shall proceed as in the case of a public highway; and like notice shall be given to the occupants of the land through which it shall be laid, and the owners thereof, their agents, or attorneys.

May be a common road—to be opened by petitioners.

SECT. 27. Said private road shall, at the discretion of said board, be recorded and declared a common road, for the use and convenience of the individual petitioning therefor, or of the public, and shall be opened by the persons petitioning therefor.

Owner objecting, damages may be assessed, &c.

SECT. 28. If the said private road shall be laid out through any person's land who shall object thereto, the damages shall be assessed as provided in case of objection to public highways, which being paid by the person or persons applying for such way, they may proceed to open the same, agreeably to the order of said board.

Swinging gates, when allowed on private road.

SECT. 29. Any person may be permitted by said board to hang swinging gates on said private road, but shall keep the gate or gates in good repair, under the penalty of one dollar for every offence, and the like sum for every day any such gate shall remain out of good repair, to be recovered before a justice of the peace of the proper county, by any person prosecuting for the same, one moiety to the prosecutor, and the other towards keeping said road in repair.

Out of repair, penalty.

Width of public and private roads.

SECT. 30. All public highways laid out by authority of the county commissioners, shall not be less than forty feet wide, and all private roads shall not be more than thirty feet wide.

SECT. 31. All public highways established on a county line, shall be opened and repaired the same as if the whole of any such highway were within the limits of each county.

Owner wanting to enclose land, may turn road, and how.

SECT. 32. Any person or persons wishing to enclose land through which any state or county highway may run, may petition the board for permission to turn such highway on his, her, or their own land, or the land of any other person consenting thereto, at his, her, or their expense.

Viewers, their duty.

SECT. 33. Three viewers shall thereupon be appointed, who shall proceed to view the same, and report the respective distances and situation of the ground of the established and the proposed highway.

Notice of application, and of view.

SECT. 34. Like notice of the intention to file such petition, and of the time of making such view shall be given, as is required in other cases.

On report, may be changed.

New road being made good, old one may be vacated.

SECT. 35. If upon the report the board is satisfied that the public will not be materially injured by such change, they shall order the same; and upon satisfactory assurance of the highway having been opened and improved equally convenient for travellers, the board shall vacate so much of the former highway as lies between the different points of intersection, and record said report.

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ARTICLE 1.

Petition for vacation of useless roads.

SECT. 36. Any twelve freeholders of any township or county may make application to the proper board, by petition signed by them, for the vacation of any highway as useless, and the repairing thereof as an unreasonable burthen.

Proceedings thereon.

SECT. 37. The said petition shall be publicly read on two different days of the session at which it is presented, and the matter continued without further proceedings to the next session.

Same.

SECT. 38. At the ensuing session, the same shall be again publicly read, and if no remonstrance be made thereto in writing, by twelve freeholders or householders, the board may proceed to vacate such highway or any part thereof.

If objection is made, viewers to be appointed.

SECT. 39. If remonstrance shall be made, the board shall appoint viewers, who shall examine and report as in other cases in this chapter provided.

State and county road, how changed.

SECT. 40. Any state or county highway may be changed by the board of county commissioners, on the petition of any twelve freeholders, or twenty-four householders of the township or county in which the part of such highway proposed to be changed shall lie.

Notice and proof required.

SECT. 41. The like notice of such application shall be given and proof thereof made, as in the third and fourth sections of this chapter is prescribed, on application for the location of highways, and like proceedings shall be had thereon, except as hereinafter directed.

Report required as to utility.

SECT. 42. The viewers of such highways shall also report whether in their opinion the interest of the public shall require the proposed change.

Old road to be vacated when new one is improved.

Expense paid by county.

SECT. 43. If such report shall be in favor of the proposed change, the board shall order the same to be made; and when the new highway shall be opened and made as convenient for travellers as the old, they shall order the same to be vacated; and the expense of such view and opening shall be defrayed out of the county treasury.

When petitioners shall pay expenses.

SECT. 44. If such report shall be against the expediency of such change, the board shall order that the petitioners for such change shall pay the expenses attending the proceeding.

Change, when to extend into another county.

SECT. 45. Any such alteration may extend from one county into another when twenty-four freeholders or forty-eight householders of any county or counties interested shall petition for the same.

Petition, notice, &c. required.

SECT. 46. Such petition, the notice thereof, and the proceedings thereon, shall conform to the rules herein established for petitions to locate highways, except as in the next succeeding section is provided.

In what county made.

SECT. 47. First. Such petitions may be made to the board of county commissioners of any county in which such alteration is proposed to be made.

Forty days' notice.

2. At least forty days' notice of such application shall be given.

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Copies of petition sent to other counties.

3. The auditor of the county where such petition is filed shall transmit a copy of the same to the auditors of the other counties interested.

Commissioners to appoint viewers.

4. The auditor to whom the same is sent shall present it to the board of commissioners of his county, at their next session, and said board shall appoint three viewers to meet and act with those to be appointed by the commissioners of the county whence such petition was transmitted.

Time and place for viewers to meet.

5. The board with whom the original petition is filed having appointed viewers, shall also appoint a time not less than forty days distant, and a place for their meeting, convenient for all to assemble; a copy of which order shall be sent to the auditors of the other counties interested.

Notice to be given by sheriff.

6. The auditor of the county to whom such order is sent, shall forthwith issue his precept to the sheriff, requiring him to notify the viewers appointed for his county to meet at the time and place designated, which shall be forthwith served, and return thereof made by such sheriff.

Reports, where made, and proceedings.

7. Report of the proceedings of such viewers shall be made to the board of commissioners of each county interested, and said boards shall proceed to carry out the same as may be necessary within their respective counties.

Expenses, how audited and paid.

8. Such board shall allow their respective viewers such compensation as shall be reasonable, and shall also allow for all other expenses, and order the same to be paid out of the county treasury, or by the petitioners, according to the rules herein before established.

How apportioned.

SECT. 48. When to be paid out of the county treasury, the expense attending such proceeding shall be apportioned among the counties interested in proportion to the distance of the proposed change in the respective counties.

Remonstrance.

SECT. 49. Like remonstrance against any such change may be made as provided in sections eighteen and twenty-two of this chapter, and like proceedings shall be had thereon.

Sixty days' notice to remove fences.

SECT. 50. Whenever any public highway shall have been laid out through any enclosed land, the supervisor shall give the occupant or the owner of such land, if a resident of the road district, sixty days' notice in writing to remove his fences.

Not to be required between first of April and first of November.

SECT. 51. Such notice shall not be given so as to require a removal of such fence at any time between the first day of April and the first day of November.

Owner, how compensated for removal.

SECT. 52. If the owner or occupant shall not have been allowed damages for the laying out of such highway through his land, the supervisor shall give the person removing such fence credit for such removal on his highway tax.

When supervisor shall remove fence.

SECT. 53. If the fence shall not be removed pursuant to such notice, the supervisor shall cause the same to be done.

Six years' non-user to vacate road.

SECT. 54. Every public highway already laid out, or which may hereafter be laid out, and which shall not be opened and worked within six years from the time of its being so laid out, shall cease to be a highway for any purpose whatever.

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ARTICLE 2.

Recorded roads and roads used for twenty years recognized.

SECT. 55. All public highways now in use, heretofore laid out and allowed by any law of this state, of which a record shall have been made, and all roads not recorded, which have been or shall be used as public highways for twenty years or more, shall be deemed public highways, but may be altered in conformity with the provisions of this chapter.

Appeal from county commissioners.

SECT. 56. When any person shall consider himself aggrieved by the decision of any board of county commissioners in regard to the performance of any duty required by this article, such person may appeal, within sixty days after such decision, to the circuit court of the proper county, whose decision thereon shall be final.

Which circuit court shall have jurisdiction when proceedings are in several counties.

SECT. 57. Where proceedings shall have been had in more than one county, the auditors of each county shall furnish copies of such proceedings to be filed with the circuit court of the county in which the original proceeding was instituted, which court shall have jurisdiction of the appeal.

ARTICLE II.

Of the erection of bridges.

SECTION

58. Needful bridges to be erected.
59. When other districts may be added to help to build it; special tax assess'd.
60. Tax may be apportioned according to interest.
61. Assistance from county treasury; persons advancing to have credit on subsequent taxes.
62. Superintendents for erection.
63. Their compensation and oath.
64. Contracts for building, how made.
65. When individuals may be allowed to build, and on what conditions.
66. Toll bridges may be purchased.
67. Tolls may be collected on bridges so built or purchased.
68. Notice forbidding fast riding.
69. Penalty therefor.
70. Penalty for otherwise injuring bridge.

Needful bridges to be erected.

SECT. 58. Whenever, in the opinion of the board of county commissioners, the public convenience shall require that a bridge should be built over any water course, they shall cause surveys and estimates therefor to be made, and direct the same to be erected.

When other districts may be added to those which are to build it.

Special tax.

SECT. 59. If the estimate therefor shall exceed the ability of the district, by the application of its ordinary road work and tax to perform, the board may add thereto any other district or districts, or portions of a district, which may be interested in the work, and may assess for the purpose a special tax on the real estate situate therein.

Tax apportioned according to interest.

SECT. 60. Such board may, in their discretion, apportion such special tax according as the property taxed is interested in the work proposed.

Donations from county treasury.

SECT. 61. The board shall receive and expend all donations that shall be made for any such purpose: they may also aid the same, when of general importance, by advances from the county

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treasury: they may also allow persons advancing for any such work, credit on their road tax for the same or any subsequent year or years.

Donors allowed credit on road taxes.

Superintendents for erection.

SECT. 62. For the erection of any such bridge the said board may appoint the supervisor of the said district, or any other one or more discreet persons, as superintendents thereof.

Compensation and oath.

SECT. 63. Such superintendents may be allowed a suitable compensation, and shall take an oath faithfully to discharge their duties.

Contracts for building, how made.

SECT. 64. The board shall, when they deem it of sufficient importance, advertise for contracts to build such bridge, and may enter into the proper contracts in writing therefor, requiring such guaranties as may be thought necessary.

When individuals may be allowed to build and terms.

SECT. 65. If any such bridge cannot be erected by public means or donations, the board may empower any person or company to build the same, or to furnish part of the means therefor, allowing them to receive toll at stipulated rates, according to the amount of expenditure, subject, in all cases, to the right of the county, township, or district within which it is situate, to claim the same on payment of the sum expended with ten per cent.

Toll bridges may be purchased.

SECT. 66. Whenever the board of county commissioners shall deem it proper and for the public good to purchase any toll bridge or to buy out any private interest therein, for the assessment, collection, and expenditure of the sum necessary therefor, said board shall have and possess all the powers conferred in sections fifty-nine, sixty, and sixty-one of this chapter.

Tolls may be established on bridges so built or purchased.

SECT. 67. Said board, for the purpose of meeting any expenditures for the building or purchase of any bridge, or refunding any sum advanced for such purpose, or for making any special improvement on any road leading to, or connected with such bridge may also establish and collect reasonable tolls on any bridge so built or purchased.

Notice against riding, &c., too fast.

SECT. 68. The supervisors of highways may put up and maintain, in conspicuous places at each end of any bridge in his district, the length of whose chord is not less than twenty-five feet, a notice with the following words in large characters: "ONE DOLLAR FINE FOR RIDING OR DRIVING ON THIS BRIDGE FASTER THAN A WALK."

Penalty therefor.

SECT. 69. Whoever shall ride or drive faster than a walk over any bridge upon which such notices shall have been placed, and which shall then be found thereon, shall, for every such offence, forfeit the sum of one dollar.

Penalty for injuring bridge.

SECT. 70. Whoever shall injure any bridge maintained at public charge, shall, for every offence, forfeit treble damages.

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ARTICLE III.

Of the officers entrusted with the care and superintendence of highways and bridges, and their general powers and duties.

SECTION
71. County commissioners to have care of roads, and shall, 1. Direct laying out, opening, and repair. 2. regulate and alter. 3. Ascertain, describe, and record roads. 4. Lay off districts. 5. Assign hands.
72. Two or more districts may be united for special object.
73. Additional tax, when imposed for same.
74. Aid from county treasury for same.
75. Auditor to appoint supervisor, when.
76. Notice of such appointment.
77. No person to serve more than once in four years.
78. May commute for six dollars.
79. On failure to serve or commute may be fined.
80. Duties of supervisors. 1. Oath. 2. Fulfil orders of county commissioners. 3. Repair roads. 4. Work out tax, collect, and expend fines. 5. Receive and expend money tax.
81. When additional assessment for repairs.
82. When for removal of casual obstructions.
83. Extra labor, when to be a credit on future taxes.
84. Fines may be expended for implements; taxes may be applied to same purpose.

SECTION
85. Guide posts to be erected; how paid for.
86. When adjoining lands may be entered and materials used.
87. Damages therefor, how assessed.
88. Damages and costs, how paid for.
89. Supervisor may be a witness; not liable for costs.
90. Amount of work to be done before July.
91. Account of receipts and expenditures and work done; to pay over balance to successor.
92. Penalty on supervisor failing to call out hands, &c.; may also be sued for money in his hands.
93. Successor to collect delinquencies.
94. Penalty for failing to keep road in repair.
95. Penalty for failing to prosecute for forfeitures.
96. Compensation, how determined.
97. Rate.
98. Certificate thereof; may be a credit on taxes.
99. Appeal from supervisor.
100. No costs in a suit where appeal may be had.

SECT. 71. The board of county commissioners in the several counties, shall have the care and superintendence of the highways and bridges therein; and it shall be their duty, Duties of county commissioners.

1. To give directions for the laying out, opening, and the repairing of highways, and the building and repairing of bridges within their respective counties. Laying out, opening and repairing.

2. To regulate the highways already laid out, and to alter such of them as they shall deem expedient. Regulate and alter.

3. To cause such of the roads used as highways as shall have been laid out but not sufficiently described, and such as shall have been used for twenty years but not recorded, to be ascertained, described, and entered of record. Ascertain describe and record roads.

4. To divide their respective counties into convenient highway districts, and the same to change at pleasure. Lay off road districts.

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Assign hands.

5. To assign to each of said districts such of the inhabitants liable to work on highways, as they shall see proper, having regard to proximity of residence as much as may be.

Districts may be united in work.

SECT. 72. For the better improvement of any road or bridge, the board may unite two or more districts or parts of districts interested therein, and direct the application of the district labor and tax to such improvement.

Additional tax may be imposed, when.

SECT. 73. And, on petition of a majority of the citizens interested in any such improvement, they may impose an additional tax, in work or money, or both, on the districts or parts of districts aforesaid, and apply the same on such improvement.

Aid from county treasury.

SECT. 74. In aid of the same objects they may appropriate such sums as they may deem expedient out of the county treasury.

Auditor to appoint supervisor, when.

SECT. 75. When there shall be a failure to elect a supervisor for any district, and as often as vacancies shall occur, the county auditor shall appoint the necessary supervisors as soon as he is notified of such failure or vacancy occurring.

Notice of such appointment.

SECT. 76. When an appointment of supervisor is made by the auditor, he shall make out a notice thereof and deliver the same to the sheriff of the county, within three days after such appointment; and said sheriff shall deliver the same to the person appointed, and make return thereof to the auditor within seven days thereafter.

None required to serve more than once in four years.

SECT. 77. No person shall be liable to serve as supervisor of highways oftener than once in four years.

May commute for six dollars.

SECT. 78. Any person may discharge himself from such obligation to serve by the payment into the county treasury, for the use of the proper district, of the sum of six dollars.

Not accepting or paying, &c., to be fined.

SECT. 79. Any person liable to work on highways, refusing to accept the appointment of supervisor within his district and and to qualify and serve as such when duly elected or appointed, or to pay the sum in the next preceding section specified as a commutation therefor, within twenty days after his appointment or election, shall be liable to be indicted therefor, and on conviction, to be fined in any sum not less than six dollars.

Duty of supervisors.

SECT. 80. It shall be the duty of the supervisors of highways,

Oath.

1. To take an oath faithfully to discharge their duties.

Fulfil orders of county commissioners.

2. To carry into effect all orders of the board of county commissioners for the opening and improving of roads within their respective districts.

Repair roads.

3. To repair and keep in order the public highways within their respective districts.

Work out labor tax, collect and expend fines.

4. To call out the hands assigned to their districts at the time best suited for the improvement of roads; to see that the labor be faithfully performed; to collect all fines and commutation money due to their districts, and to expend the same for the use of the roads and bridges within their districts.

Receive and expend money tax.

5. To receive from the county treasurer the road taxes by him collected, and to expend the same on the roads and bridges within their districts.

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ARTICLE 3.

When additional tax may be assessed for repairs.

SECT. 81. When the labor and road tax assessed on the inhabitants and property of any district, shall be insufficient to keep the highways within the same in repair, the supervisor shall make another assessment of labor upon the inhabitants of his district, in proportion to the regular amount of labor and tax assessed upon each, not to exceed twice the amount of such regular tax and labor of the current year, except as in the next succeeding section is provided.

When for removal of casual obstructions.

SECT. 82. When any highway shall become impassable by reason of any casual interruption from the falling of timber, or the washing away or injury of banks or bridges, the supervisor of the district shall call out a sufficient number of hands to place such highway in passable repair.

Extra labor, when to be a credit on future taxes.

SECT. 83. When such extra labor shall not require all the hands of the district, or shall not require an equal amount of labor from each, the supervisor may assess the same upon such number of hands as he may deem sufficient, and for the amount of such extra labor performed by any one above the average amount performed by all, he shall receive a certificate which shall be a good credit to the holder thereof, whoever he may be, on account of any subsequent labor to be performed on the highways of such district.

Fines may be expended for implements.

SECT. 84. Supervisors may expend the money received for fines collected by them from delinquents under this chapter in the purchase of ploughs, scrapers, crowbars, hammers, and other implements necessary for the making and repair of highways, and if the same shall not be sufficient, they may, on application to the board of county commissioners, be allowed to expend a further sum at the discretion of such board, out of the tax assessed and collected in the district.

Taxes, when to be applied to same object.

Guide posts to be erected.

How paid for.

SECT. 85. Supervisors shall erect, where not already done, and maintain and keep up at the forks of every highway within their respective districts, guide posts, with proper inscriptions and devices thereon, the expenses thereof to be paid out of the sums received from delinquents, and if not sufficient, the residue out of the county treasury.

Adjoining land may be entered and materials used.

SECT. 86. The supervisor, or any other person by his order, may enter upon any land adjoining or near to any highway in his district, and thereupon to construct such ditches, drains, or dams, and to dig or remove any gravel, earth, sand, or stone, or to cut and remove any wood or trees, that shall be necessary for the construction, repair, or preservation of such highway.

Damages, how assessed.

SECT. 87. Any person aggrieved by the exercise of the power given in the next preceding section may petition the board of county commissioners for relief, who shall appoint three disinterested freeholders to enquire of and assess the damages, and make report thereof.

Damages and costs how paid.

SECT. 88. The damages so assessed, if any, shall be paid out of the county treasury, as also the expense of the assessment. If no damages are found, the petitioner shall pay the expense of the proceeding.

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Supervisor may be witness, and not liable for costs.

SECT. 89. In all suits brought by the supervisor, by virtue of the authority given to him by law, he shall be a competent witness and shall not be liable for costs.

Certain amount of work to be done before July.—Residue within the year.

SECT. 90. The supervisor shall cause all the hands in his district to work at least two days on the highways in his district previous to the first day of July in each year, and also within the year to work out the whole amount of tax charged to each person for road purposes.

Account of receipts, expenditures, and workdone. Pay over to successor.

SECT. 91. He shall keep an account of the work done by each person and of the amount collected and expended, and make return thereof to the county auditor on the first Monday in May after his appointment, and pay over to his successor all moneys not expended, which account he shall verify by his oath.

Penalty on supervisor failing to call out, &c.

SECT. 92. If any supervisor shall fail to compel the hands of his district to work the full time required by law, or shall fail to collect, expend, or pay over the fines and penalties and taxes in this article assessed, or to make return of the work done and money collected as above required, he shall, for each offence, pay not less than ten, nor more than fifty dollars, to be recovered by action of debt in the name of his successor, or by indictment in the proper court, and shall also be liable to be sued by his successor for any money remaining in his hands unexpended.

May be sued for money in his hands.

Successor to sue and collect.

SECT. 93. The successor of any supervisor shall collect and receive all delinquencies accruing during the term of his predecessor, and all judgments that may have been obtained in the name of his preeecessor, remaining uncollected.

Penalty for failing to keep road in good repair.

SECT. 94. Whenever any supervisor shall fail or neglect to keep the highways and bridges in his district in as good repair as the available labor or other means will enable him, he shall, for such failure or neglect, forfeit and pay any sum not exceeding ten dollars, to be recovered by his successor in an action of debt before any justice of the peace, or by presentment or indictment in the circuit court.

Penalty for failing to prosecute.

SECT. 95. If any supervisor knowing of any forfeitures accruing under the provisions of this chapter shall fail to prosecute for the same, as in this chapter required, he shall for every such offence, forfeit and pay a like sum to that for which he should have prosecuted, the same to be recovered as in the next preceding section is provided.

Compensation, how determined.

SECT. 96. The board of county commissioners at the first term after the supervisor's annual accounts are filed with the auditor, shall determine the amount of compensation to be allowed to each supervisor for services rendered during the preceding year.

Rate.

SECT. 97. Such compensation shall be rated at seventy-five cents per day, for so many days as shall be sufficient to superintend the business and work of the district, if promptly and efficiently attended to.

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SECT. 98. For the amount thereof the auditor shall give to the supervisor a certificate, which shall entitle the supervisor to a credit on his personal or property highway tax, for the same or any future year. Certificate to be given for amount—credit on taxes.

SECT. 99. Any person conceiving himself aggrieved in consequence of any decision made or act done by any supervisor, or by the refusal of such supervisor to do any act or perform any duty required by law, may complain to the board of county commissioners, whose decision thereon, after a hearing of the parties, shall be final. Appeal allowed from supervisor.

SECT. 100. If any person shall sue for or on account of any act done, decision made, or refusal to do any act or perform any duty by any supervisor, for which he might have made complaint as in the next preceding section is provided, such person shall not be allowed to recover any costs in such action. No costs in suit where appeal may have been had.

ARTICLE IV.

Of the persons liable to work on highways, the making assessments therefor, and collecting or working out of the same.

SECTION
101. Each person to work two days.
102. County board may exempt, who.
103. Property tax limited, exception as to Dearborn county.
104. Tax, how entered on duplicate and collected.
105. List of land owners to be prepared.
106. Money tax may be worked out at seventy five cents per day.

SECT. 101. Each male inhabitant between the ages of twenty-one and fifty years, shall work on the public highways within his district two days in each year, unless exempted therefrom by law, or by virtue of the next succeeding section. Each person to work two days.

SECT. 102. The board of county commissioners may exempt any person from any highway tax, or from personal labor on highways, when they shall find such person unable to pay such tax, or perform such labor from bodily infirmity. County board may exempt who. See ch. 7, sect. 32.

SECT. 103. All real estate shall be assessed with and pay as a highway tax, the sum of not exceeding ten cents on each one hundred dollars of the appraised value thereof, at the discretion of the board of county commissioners, except in the county of Dearborn, where the amount shall be limited to fifteen cents. Property tax. Dearborn county.

SECT. 104. The amount of highway tax shall be carried out in a separate column on the duplicate of state and county taxes by the auditor, and be collected and accounted for by the county treasurer as other county taxes. How entered on duplicate and collected.

SECT. 105. The auditor shall prepare and have ready for delivery to the several supervisors of the county, by the first List of land owners to be prepared

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PART 1.

day of June, annually, a list of the names of all persons owning land within their respective districts, to whom any highway tax is charged on such duplicate, with the amount of the same.

Such tax may be worked out —rate.

SECT. 106. The persons so charged shall be allowed to work out such tax, at the rate of seventy-five cents per day; and the supervisor's receipt therefor shall be received in payment by the county treasurer.

ARTICLE V.

Of the performance of labor on highways.

SECTION
107. Notice of three days required.
108. When less will suffice.
109. To be worked in the district of each person's residence, unless by consent.
110. Notice, how given.
111 Allowance to those furnishing team, &c.
112. Commutation, rate, and when paid.
113. Substitute allowed; eight hours a day's work; penalty for not working full time.
SECTION
114. Penalty for idleness or interference with others.
115. Penalty for failing to work, furnish team, &c.
116. Suit therefor.
117. Penalty, when to extinguish tax.
118. Excuse not to exempt from work at some time.
119. Casual obstruction to be removed by owner of adjoining land; compensation.

Notice to be given—three days.

SECT. 107. The supervisor shall give at least three days' notice to all persons liable to work on highways in his district of the time and place when and where they are to appear for that purpose, and with what implements.

When less will suffice.

SECT. 108. But in case of emergency, a shorter notice, at the discretion of the supervisor, shall suffice.

Work to be done in place of residence.

SECT. 109. No person shall be required to work out of the district in which he resides, on account of any tax assessed on his real estate within the county, unless he shall elect to work in some district in which his land is situate; in which case he may, with the consent of the supervisor of the district where he resides, work out the tax assessed on such land, in the district where it is situate.

When otherwise by consent.

Notice, how given.

SECT. 110. The notice aforesaid may be given by the supervisor personally, or in writing left at the usual place of residence of the party.

Allowance for team, &c.

SECT. 111. The supervisor shall make to each person who shall at his request have furnished a plough or wagon, with a pair of horses or oxen, and driver, an allowance of three days' work for the same, and also in proportion for a less force.

Commutation, rate, and when to be paid.

SECT. 112. Every person liable to work on highways, other than a supervisor, shall be allowed to commute for such work, or for any part thereof, at the rate of seventy-five cents per day; in which case the commutation money shall, within twenty-four

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hours after notice to work has been given, be paid to the proper supervisor, to be expended in the improvement of the highways and bridges in his district.

Substitute.

SECT. 113. Every person assessed to work on the highways when warned, may appear in person, or by an able bodied man as a substitute; and the person or substitute so appearing shall actually work eight hours in each day, under a penalty of twelve and a half cents for every hour such person or substitute shall be in default.

Shall work eight hours a day.

Penalty for not working full time.

Penalty for idleness or interference with others.

SECT. 114. If any such person or his substitute shall, after appearing, remain idle or not work faithfully, or shall hinder others from working, such offender shall, for every such offence, forfeit the sum of one dollar.

Penalty for failing to work—to furnish team &c.

SECT. 115. Every person so assessed and duly notified, who shall refuse or neglect to appear or pay his commutation as above provided, shall forfeit for every day's refusal, one dollar; if he was required to furnish a team, wagon, man, or other implement, and shall refuse or neglect to comply, being the owner of such team or implement required, he shall pay as follows:

1. For wholly omitting to comply with such requisition, three dollars for each day.

2. For omitting to furnish a wagon or plough, one dollar for each day.

3. For omitting to furnish a pair of horses or oxen, one dollar for each day.

4. For omitting to furnish a driver, one dollar for each day.

Suit to be brought for penalty. *Aldrich* v. *Hawkins*, et al., 6 *Blackf.* 125.

SECT. 116. The supervisor shall, within six days after any person so assessed and notified shall be guilty of any refusal or neglect for which a penalty is imposed in this article, unless a satisfactory excuse is rendered to him therefor, bring an action of debt for the penalty imposed, in his own name, before any justice of the peace of the proper township.

Penalty, when to be set off on work.

SECT. 117. Every penalty collected shall be set off against the assessment upon which it was founded, estimating every dollar collected as a satisfaction for one day's work.

Excuse not to exempt person from working or paying at future time.

SECT. 118. The acceptance by a supervisor of any excuse for refusal or neglect, shall not in any case exempt the person excused from his liability to work or commute the whole number of days assessed upon him for the year.

Owner of adjoining land, when to remove obstruction.

SECT. 119. When a public highway shall run through or border on any plantation, and shall become obstructed by the falling of trees or otherwise, it shall be the duty of the owner of such plantation to remove such obstruction so soon as the same comes to his knowledge, for which the supervisor of such highway shall allow him a reasonable credit on his liability to work on highways.

Compensation.

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ARTICLE VI.

Miscellaneous provisions of a general nature.

SECTION
120. Penalty for horseracing or shooting on highway.
121. Penalty for injuring highway, bridge, &c.
122. Penalty for injuring guide posts.
123. Penalty for obstructing highway.
124. Penalty for continuance of obstruction.
125. Teams, &c., meeting to keep to the right.
126. Penalty for omission, and how collected.
127. Trees standing in road, for whose use.
128. Certain counties having special road laws, are not to be governed by this chapter.

Penalty for horseracing or shooting on highway.

SECT. 120. Any person who shall be found horseracing or shooting along or across any public highway or bridge, shall, upon conviction before any justice of the peace, be fined in any sum not exceeding three dollars.

Penalty for injuring, &c.

SECT. 121. Any person who shall in any manner injure or destroy any drain, dam, embankment, or ditch, made for the protection or improvement of any public highway or bridge, shall forfeit and pay the sum of ten dollars for every such offence, to be recovered by the supervisor in an action of debt before any justice of the peace, for the use of the highways and bridges within the district.

Penalty for injuring guide post.

SECT. 122. Any person who shall intentionally injure any guide post, or deface or alter any inscription thereon, shall, for every such offence, forfeit and pay the sum of ten dollars, to be recovered in the manner and for the use aforesaid.

Penalty for obstruction.

SECT. 123. If any person shall obstruct any public road or way unnecessarily and to the hinderance of passengers, such person shall forfeit a sum not exceeding ten dollars, to be recovered in the manner and for the use aforesaid.

Penalty for continuance of obstruction.

SECT. 124. Every person fined under the next preceding section, shall forfeit and pay the further sum of one dollar for each day he may suffer such obstruction to remain to the hinderance of passengers to be recovered in the manner and for the use aforesaid.

Teams, &c., to keep to the right.

SECT. 125. The driver of any wagon, cart, carriage, sleigh, or other vehicle, using any of the turnpikes or public highways, when met or when overtaken by any other wagon, cart, carriage, sleigh, or other vehicle, shall keep to the right, so as in both cases to allow such wagon, cart, carriage, sleigh, or other vehicle, meeting or overtaking the other, to pass free and without obstruction.

Penalty for omission, and how collected.

SECT. 126. Any person offending against the provisions of the next preceding section, shall forfeit and pay the sum of two dollars for every such offence, to be recovered by action of debt by and for the benefit of any person suing for the same; and shall also be subject to damages to be recovered by the party injured.

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SECT. 127. All trees standing or lying on any land over which any highway shall be laid out, shall be for the proper use of the owners of such land, except such of them as may be requisite to make or repair the highways or bridges on the same land. ARTICLE 1. Trees standing on new road, for whose use.

SECT. 128. All those counties, except the county of Daviess, which have special laws upon the subject of roads and highways, are hereby exempted from the provisions of this chapter.

CHAPTER 17.

OF FERRIES.

SECTION
1. County commissioners may establish ferries; owner of land to have preference of grant unless he neglect to apply.
2. When a ferry may be established within one mile of an old ferry.
3. When a stream forms the boundary of a county, application for license, where to be made.
4. Owner neglecting to apply, board may grant license to another; bond and security to be required.
5. Quantity of ground that may be occupied by ferry; boats lying at the landing not to be disturbed, if ten rods distant.
6. When, and on what conditions, owner of land may take ferry from occupant.
7. When license may be given to owner of land adjoining a town common.
8. All applicants for license to give thirty days' notice.
9. Board may specify the kind of boats and number of hands.
10. Bond to be given by applicant; its condition, and where filed; if not given, license to forfeit.
11. What expresses shall pass free.
12. Good and sufficient boats and hands required; ferry to be kept open from daylight until dark, and later on payment of double fees.

SECTION
13. Sideways to be dug and kept in good order.
14. When license may be granted without charge.
15. Keepers of ferries to be exempt from militia duty, road work, and serving on juries; penalty on persons ferrying without license, and how recovered.
16. Rates of ferriage to be established by commissioners.
17. On complaint that sufficient boats and hands are not kept, or of neglect, &c., ferry may be vacated; costs, how awarded.
18. Appeal authorized; when and how to be obtained; auditor to file papers in twenty days; cause, when docketed.
19. Penalty for delaying passengers, and how recovered.
20. Penalty for improperly ferrying from the Indiana shore over the Ohio or Wabash river.
21. Such penalty not recoverable if the regular ferry is out of repair, &c.; nor in case of distress.
22. Non-resident owner of land may have a license to ferry.
23. Ferry landings not to be obstructed; penalty therefor.

SECTION 1. The several boards of county commissioners shall be and they are hereby empowered to establish public ferries across those rivers or creeks bounding or within their respective counties, whenever they shall deem it necessary, on County commissioners may establish ferries.

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due application to them made; but no such ferry shall be established, unless the person making such application be the proprietor of the land on that side of such river or creek, on which he wishes to have such ferry established; or where the owner or holder of any land where the public convenience may require that such a ferry should be kept, shall neglect or refuse to have a public ferry established within a reasonable time.

Owner of land to have preference of grant, unless he neglect to apply.

Not within one mile of an old ferry, unless, &c.

SECT. 2. No ferry shall be established within one mile immediately below or above a regularly established ferry, unless it shall be deemed important for the public convenience, or where the situation of a town or village, the crossing of a public highway, or the intervention of some creek or ravine shall render it necessary.

When a stream is the boundary of a county, application for licence, where to be made.

SECT. 3. When any river or creek shall be the boundary line between two counties, and any person holding lands on either side of the said river or creek, shall wish to have a public ferry across the same, he or she shall apply to the board of county commissioners for the county in which his or her land lies, who are hereby authorized to establish such ferry, from the land of such applicant to the opposite side.

Owner neglecting to apply, board may grant license to another.

SECT. 4. When any person being the owner or holder of any land, lying on any river or creek within or bounding on this state, where any public road may cross the same, and where the public convenience may require that a ferry should be kept, shall neglect or refuse to have a public ferry established within a reasonable time, it shall be lawful for the board of county commissioners for the county in which it may be necessary to have such ferry established, upon proper application being made, and after having given three months' public notice of their intention, by advertisement in some public newspaper in the county, or by written notices set up in three of the most public places in the county, to grant a license to some person to keep a ferry at such place, on such conditions as to them may appear reasonable and just, taking bond and security as hereinafter provided.

Bond and security to be required.

Quantity of ground that may be occupied by ferry.

SECT. 5. Any person or persons having obtained a license from the board as aforesaid shall be and they are hereby authorized and empowered to keep such ferry so established, and also to occupy as much ground as may be necessary to discharge passengers, not exceeding one hundred rods on each side of the creek or river, as the ferryman may deem sufficient and necessary; but shall not be permitted to remove or disturb any boat lying at shore ten rods or more from the regular landing.

Boats at landing not to be disturbed if ten rods distant.

When and on what condit'ns owner of land may take the ferry from occupant.

SECT. 6. The owner of the land where such ferry may have been established may demand and take possession of any such ferry, on his or her tendering to the holder of such ferry the full value of all the boats and other craft which may have been necessarily employed for the transportation of passengers and property, with all other expenses that may have accrued in digging the banks, or otherwise improving the ferry, and ten per centum thereon, giving also to the board of county commis-

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sioners a bond with security as hereinafter described; which bond shall be a complete release of the obligations contained in the bond previously given by the holder of such ferry.

License may be given to the owner of land adjoining a town common.

SECT. 7. Where the land bordering on any creek or river, across which a public ferry is deemed necessary, shall be a public common for any town, the said board shall be authorized to establish ferries across such river or creek, on application of any person owning land next adjoining such public common, under the same rules and restrictions that ferries are established to persons owning land bordering on such river or creek; but the foregoing provision shall not be so construed as in any wise to affect the right of any town or corporation, or of any person or persons being proprietor or proprietors of any town, their heirs or assigns, by giving the right to establish a ferry or ferries to any person or persons who are not proprietors of the land lying on the margin of the river or creek, if the corporation of such town, or the proprietor or proprietors of such land, keep up a sufficient number of ferries across such river or creek.

But not if the corporation, or the proprietor of the town shall keep up a ferry.

Applicant to give thirty days' notice.

SECT. 8. The board of county commissioners shall not establish any ferry, until the applicant shall prove satisfactorily, that written notices of his intended application have been set up in three of the most public places in the township, at least thirty days.

Board may specify the kind of boats, and number of hands.

SECT. 9. The board of county commissioners shall have authority to order and direct, from time to time, the number and description of boats, and the number of hands which shall be kept at each ferry respectively.

Bond to be given by owner or applicant— Its condition, and where filed.

SECT. 10. The owner of the land whereon such ferry is established, or the applicant to whom the ferry is granted, shall, within three months from the establishment thereof, execute a bond payable to the state of Indiana, with one or more sureties, to be approved by the board, in the penal sum of five hundred dollars, conditioned that he or she will keep such ferry, or cause the same to be kept, according to law; and that he or she will give passage to all public messengers and expresses, when required, without fee or reward; which bond shall be filed with the clerk of the county, to be proceeded on in the same manner as other public bonds for any breach of the condition thereof; and if any person shall neglect or refuse to give such bond, he or she shall forfeit his or her right to said ferry.

Bond not given license shall forfeit.

What expresses shall pass free.

SECT. 11. All expresses sent on public service, by a commander in chief, colonel, or major, to or from the governor, for the time being, or commanding officer of the militia, shall be accounted public messengers and expresses, and shall pass all ferries free of charge, within the condition of the bond aforesaid, if the despatch carried by such express be endorsed "public service," and be signed by the person sending the same; but no ferryman shall be bound to give passage free to any such express in time of peace, except in cases of insurrection.

Good and sufficient boats and hands to be

SECT. 12. Each and every licensed ferry keeper shall constantly keep a good and sufficient boat, or boats, if more than

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kept—ferry to be open from daylight to dark, and afterwards on payment of double fare.

one be necessary, with a sufficient number of able and skilful ferrymen, as may be directed and required by the board of county commissioners, and give due attendance to the said ferry or ferries, and to the transportation of all persons, with their property, who shall apply for the same, between daylight in the morning and dark in the evening, so that no unnecessary delay may happen to persons having occasion to pass said ferry; and all licensed ferry keepers shall be obliged, at any hour of the night if required, except in cases of evident danger, to give passage to all expresses above recited, and to all other persons requiring the same, on their tendering and paying double the rate of ferriage allowed to be taken during the day time.

Banks to be dug and kept in good order.

SECT. 13. It shall be the duty of all ferry keepers within this state, to cause the banks of the river or creek to be dug sufficiently low, and kept in good passable order for the passage of man and horse, wagons and other vehicles.

When license may be granted without charge

SECT. 14. The boards of county commissioners may, in their discretion, and under the restrictions hereinbefore prescribed, establish and license ferries over streams that are otherwise impassable except for short periods in particular seasons without charge, if the board shall be satisfied that the profits of such ferry will not justify the owner in paying a tax therefor; but every ferry so established under the provisions of this section, shall be subject to all the rules, regulations, and restrictions herein prescribed for regulating ferries, except so far as relates to the payment of a ferry tax.

Ferry keepers to be exempt from militia duty, road work, and serving on juries.

SECT. 15. For the encouragement of ferry keepers, and in consideration of setting over public messengers and expresses, exempted from payment of ferriage by this chapter, all men, while necessarily employed in attending on licensed ferries in this state, shall be free from militia duty, except in times of war or public danger, from working on roads and highways, so far as personal service is required, and from serving on juries; and if any person or persons, other than ferry keepers, licensed under the provisions of this chapter, shall, for fee or reward, or any expectation or promise thereof, set any person over any river or creek whereon public ferries are established, or shall hire to any person or persons, a boat to be used in ferrying at any place within two miles of such public ferry, he, she, or they, so offending, shall forfeit the sum of three dollars for every such offence, to be recovered before any justice of the peace of the county wherein such offence was committed, in the same manner that other fines are recovered for the breach of the penal laws of this state; and shall likewise be subject to be taxed by the board of county commissioners, in the same manner as regularly licensed ferry keepers.

Penalty on persons ferrying without license and how recovered.

Rates of ferriage to be established.

SECT. 16. The rates of ferriage shall be fixed by the board of county commissioners, at the time of licensing the ferry, and from time to time thereafter, as they shall think proper.

On complaint that the necessary boats, &c.

SECT. 17. If any ferry or ferries which now are or may hereafter be established, shall not be furnished with the neces-

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sary boat or boats and ferrymen, within six months after the establishment thereof, and continue to be so furnished; or if the proprietor shall, at any time thereafter, wilfully neglect to attend to the same, it shall and may be lawful for the board of county commissioners for the county wherein such ferry or ferries may be situate, on complaint to them made, to cause the proprietor or proprietors of such ferry to be summoned to shew cause at the next meeting of the said board, why such ferry or ferries should not be discontinued; and such board shall vacate such ferry, or dismiss such complaint, according to the testimony adduced, and may award costs against the complainant, if such complaint is dismissed, or against the proprietor or proprietors, if the ferry be vacated.

If ferry are not kept, or of neglect, ferry to be vacated.

Costs, how awarded.

SECT. 18. If any person shall think himself or herself aggrieved by the establishment or vacation of a public ferry by the board of county commissioners under this chapter, he or she shall have the right to appeal to the circuit court of the proper county, upon filing bond within thirty days, payable to the treasurer of the county, with security to be approved by the county auditor, and conditioned for the due prosecution of said appeal, and the payment of all costs, if judgment be rendered against such appellant; and the county auditor shall cause said bond, with a certified copy of the proceedings of said board, and all the original papers filed in the cause, to be filed in the office of the clerk of the circuit court within twenty days thereafter; and the cause shall be docketed for the ensuing term, and further proceedings had, and judgment rendered therein, as in other cases of appeal.

Appeal authorized—when and how obtained.

Papers, &c., to be filed in twenty days.

Cause, when docketed.

SECT. 19. Any licensed ferry keeper who shall neglect or refuse to set over at his ferry, during the hours of daylight, any person or property without unnecessary delay, shall be fined, by presentment or indictment, in any sum not exceeding one hundred dollars, and shall, moreover, be liable to the party injured in a civil action.

Penalty for delaying passengers, and how recovered.

SECT. 20. Hereafter when any person or persons residing or staying in the state of Kentucky or Illinois, shall ferry across the Ohio or Wabash river from the Indiana shore, any where within one half mile of an established ferry, any person, beast, commodity or any thing whatever, for which the owner of such ferry might have been entitled to ferriage had the owner of such ferry ferried over the same, such person or persons so ferrying the same over as aforesaid, shall be liable to pay to the owner of such ferry the full amount of such ferriage, whether such person or persons received any pay therefor or not; and the owner of such ferry may recover the same by action of assumpsit before any court having jurisdiction thereof.

Penalty for improperly ferrying from the Indiana shore over the Ohio or Wabash river.

SECT. 21. The owner of such ferry, however, shall not be entitled to recover as aforesaid if his ferry, at the time, should not be in sufficient repair, and not sufficiently attended to ferry over, safely and in good time, such person, beast, commodity, or thing so ferried over as aforesaid; nor shall the preceding

Penalty not recoverable if regular ferry is out of repair, &c., nor in case of distress, &c.

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section be construed to extend to cases of ferrying, where by reason of sickness or distress, the same may be necessary.

Non-resident owner may have license to ferry.

SECT. 22. Nothing in this article shall be so construed as to prohibit any citizen of an adjoining state, owning lands in this state, from enjoying all the rights and privileges of ferrying that a citizen of this state can have by this article.

Obstructing ferry landings prohibited.

SECT. 23. It shall not be lawful to obstruct, by steamboats, keelboats, flatboats, or otherwise, the landings of ferries established under this chapter; but all such ferries shall be entitled to the exclusive use of the whole width of the routes leading thereto, for all appropriate purposes; and any person obstructing such landings shall be subject to the same penalties as are prescribed for the obstruction of public roads and higways.

Penalties therefor.

CHAPTER 18.

OF ESTABLISHING SEATS OF JUSTICE, AND CARRYING THE LAWS INTO EFFECT IN NEW COUNTIES.

ARTICLE 1. Of establishing seats of justice.
ARTICLE 2. Of carrying the laws into effect in new counties.

ARTICLE I.

Of establishing seats of justice.

SECTION
1. Five commissioners to be appointed; their qualifications.
2. Their duties.
3. Shall receive donations in land.
4. Shall endeavor to obtain a site by donation or purchase.
5. Shall take bonds for conveyance of land purchased or donated.
6. When to adjourn and notify absent members.
7. When to establish seat of justice at an old town.
8. Commissioners to give certificate for land purchased.
9. Compensation of commissioners and agent.
10. Moneys arising from sale of lots, how appropriated.
11. Ten per cent. reserved for county library.

SECTION
12. Agent, how appointed, and his bond and duties—to obtain conveyances, lay off town, sell lots, collect moneys, and make deeds.
13. Successor, how appointed.
14. Agent, when resigning or removed, &c., to hand over papers, &c., to whom, &c.
15. Treasurer to lay same, when received by him, before county commissioners. Treasurer's compensation.
16. Duties of successor to agent.
17. Agents, when and how to settle account and pay over.—May be removed on failure.
18. Agents shall pay over same description of funds as received.
19. Agent dying, executor, &c., to deliver over papers, &c.
20. Who may not act as agent.

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ARTICLE 1.

Five commissioners to be appointed—qualifications.

SECTION 1. Whenever any new county shall be laid off, five commissioners shall be appointed by the general assembly who at the time of discharging the duties herein enjoined, shall neither reside in such new county, nor hold any real estate therein.

Their duties.

SECT. 2. It shall be the duty of said commissioners, or any three or more of them, to convene at such time and place in such new county as the general assembly shall appoint, and being first sworn to discharge the duties assigned to them by this article, they shall proceed to fix on the most eligible and convenient place for the permanent seat of justice of such new county, taking into view the extent thereof, the quality of the land, and the prospect of the weight of future as well as the present population, together with the probability of future counties being formed out of such territory.

Shall receive donations in land.

SECT. 3. It shall be the further duty of the said commissioners to receive donations in land from any person or persons owning lands in such county, and offering donations for the use of the same.

Shall endeavor to obtain a site by donation or purchase.

SECT. 4. The said commissioners shall enquire and ascertain whether any land on which they may be inclined to fix the seat of justice can be obtained by donation or by purchase at a reasonable price, sufficient in quantity and suitable in quality and situation for the site of a town; and if such quantity of land cannot be obtained by donation or by purchase at a reasonable price, then they shall fix on the next most eligible place where such land can be procured as aforesaid.

Shall take bond for conveyance of land, purchased or donated.

SECT. 5. The said commissioners shall take, of any person or persons proposing to give or sell any such land, a bond or bonds, payable to the board of county commissioners of such county and their successors in office, and conditioned for the conveyance of such tract or tracts of land so given or sold, to such person as the county commissioners shall appoint as agent to receive the same, to be held and disposed of by such agent and his successors in office, for the uses and purposes for which the same shall be conveyed; which bond or bonds the said commissioners shall deliver to the county commissioners, together with a plain and correct account of their proceedings, containing a particular description of the land so selected, and said land shall be considered the permanent seat of justice for such county.

When to adjourn and notify absent members.

SECT. 6. It shall be the duty of the commissioners, in the event of the non-attendance of a sufficient number to transact the business aforesaid, to adjourn to another day, and give the absent commissioners notice of the day to which they have so adjourned.

When to establish seat of justice at an old town.

SECT. 7. If, in the opinion of the commissioners, no situation can be found whereon to lay off a town for a county seat, which would be equally convenient to the citizens of the county, as the establishment of such county seat at some town already laid off, then said commissioners are hereby authorized to receive donations in lots, money, and adjoining land, and to establish the

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county seat at such town as they shall think will be most for the interest of such county.

Commissioners to give certificate for land purchased.

SECT. 8. Any person or persons of whom any lands may be purchased for the use of such county, shall, at the time of giving bonds for the conveyance of the same, receive of the commissioners aforesaid a certificate of the quantity and price of the same, which certificate shall entitle such person to receive the amount of the price of such land out of the first money remaining in the treasury of such county.

Compensation of commissioners and agent.

SECT. 9. The said commissioners shall be entitled to receive each three dollars for every day they may be necessarily employed in performing the duties enjoined on them by this article, and in travelling to and from the place of meeting; and the agent aforesaid shall be entitled to receive for his services such compensation as the board of county commissioners may think just and reasonable.

Moneys arising from sale of lots, how appropriated.

SECT. 10. The moneys arising from the sale of lots, as hereinafter provided, shall be a fund in the treasury of such county, out of which the commissioners appointed by virtue of this article shall be first compensated for their services, and then the price of any land which may have been purchased for the use of the county shall be paid; and the balance shall be applied, so far as necessary, in defraying the expenses of erecting the necessary public buildings for the use of the county; and if any money still remains, such remainder shall be applied as other money in the treasury.

Ten per cent. reserved for county library.

SECT. 11. Ten per centum of the proceeds of such donations shall be reserved for the use of the county library.

Agent, how appointed, his bond, and duties.

SECT. 12. It shall be the duty of the board of county commissioners, forthwith, after receiving the report as herein provided, to appoint some suitable resident of such county as an agent, whose duty it shall be, after giving bond and surety to the state of Indiana, to be approved of by the said board of county commissioners, for the faithful discharge of the duties of his said office, to receive good and sufficient deeds of conveyance for any land which may have been contracted for, or given for the use of the county as above provided; and to lay off the same into town lots, streets, and alleys, according to such plan as the county commissioners may direct; he shall proceed also, from time to time, to sell the said lots, or so many of them as the said commissioners may deem proper and necessary, on such terms as the county commissioners may consider most advantageous to the county; and to collect all moneys arising from the sale of said lots, and pay the same into the county treasury; he shall also make conveyances by sufficient title to the purchasers of such lots.

To obtain conveyances.

To lay off town.

To sell lots.

Collect moneys.

Make deeds.

Successor to agent, how appointed.

SECT. 13. The board of county commissioners, whenever there is a vacancy by death, resignation, or removal of such agent, shall appoint a successor to such agent, who shall qualify and give bond as hereinbefore provided.

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Duty of agent when resigning or removed from office, to hand over papers, &c., to whom, &c.

SECT. 14. It shall be the duty of every person appointed agent under the provisions of this article, who shall remove out of the county for which he shall have been appointed, or shall resign said agency, or vacate the same in any other way whatever, forthwith to deliver to his successor in said office, or in case no such successor shall have been appointed, to the board of county commissioners, or to the treasurer of the proper county, all deeds, notes, books, or other papers appertaining to said agency, under pain of forfeiting the conditions of the bond which he may have given for the faithful performance of the duties of his said office, and he shall be entitled to a receipt from such successor, board of county commissioners or county treasurer, as the case may be, specifying particularly the deeds, bonds, notes, books, or other papers, and the amount of money, thing or things, in his possession or custody, or owing to him in his official capacity, for the use of the county.

Treasurer's duty to lay same before co. commissioners.

SECT. 15. It shall be the duty of every county treasurer who shall receive any such deeds, bonds, notes, books, or other papers, to lay the same before the next board of commissioners to be holden in said county, who shall, and they are hereby authorized to allow the said treasurer a reasonable compensation for so doing, out of any money in the treasury of said county not otherwise appropriated.

His compensation.

Duties of successor.

SECT. 16. Every person appointed as agent to receive any agency vacated as aforesaid, is hereby required to receive and receipt for all deeds, bonds, notes, books, or other papers, in manner aforesaid, and to perform all and singular the duties, obligations, and other things relative to such deeds, bonds, notes, books, or other papers so put into his hands, which could have been required of his predecessor, had he continued in said office, agreeably to the true intent and meaning of this article.

Agents, when and how to settle account, and pay over.

SECT. 17. All agents heretofore appointed, and those who may hereafter be appointed, shall, every four months and oftener if thereunto required, settle and account with the commissioners of their respective counties; and if any such agent shall fail, neglect, or refuse so to settle and account, or shall neglect or refuse to pay over any money which may have come into his hands when ordered by said board, or shall neglect or refuse to do and perform any of the duties enjoined on him by law, it shall be lawful for said county commissioners to remove said agent from office and appoint a successor, to whom the agent so removed shall deliver all conveyances, contracts, books, papers, notes, receipts, accounts, moneys, goods, and effects of every description which may be in his hands, belonging to the proper county; and on his refusing so to do, it shall be lawful for the commissioners of the proper county on their relation in their corporate name, to proceed by action at law or in chancery on his bond; and on recovering a judgment or decree against such agent and his sureties, execution shall issue therefor, and there shall be no stay thereon.

For failure, may be removed.

May be sued, and no stay of execution.

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Agents shall pay over same funds as received.

SECT. 18. All agents as aforesaid shall pay over to their successors in office, or to the board of county commissioners or the county treasurer, as the case may be, the same description of circulating medium which they shall have collected or received, for which they shall take receipts, specifying the kind of money paid over; and any agent who shall fail or refuse to pay over as aforesaid, when ordered so to do by the county commissioners, shall be liable to be removed from office by said commissioners; and such failure or refusal shall be considered a breach of his bond, on which an action may be maintained as in the preceding section is provided.

Agent dying, executor, &c. to deliver over papers, &c.

SECT. 19. If any agent appointed agreeably to the provisions herein contained, shall die before he shall have completed all the duties enjoined on him by law, and having in his possession at the time of his death any deeds, bonds, notes, books, or other papers appertaining to his said office, it shall be the duty of the executor or executors, administrator or administrators, as the case may be, of every such decedent, to deliver to the person legally appointed to succeed the said decedent in said agency, or to the county treasurer, or board of county commissioners, all such deeds, bonds, notes, books, or other papers, in the same manner, and under the same rules and regulations that are pointed out in the preceding sections.

Who may not act as agent.

SECT. 20. No county commissioner, county treasurer, clerk of the circuit court, or county auditor, shall hereafter exercise the duties of county agent; and every person holding the office of agent, who shall accept of any of the said offices, shall be considered as vacating said agency, which shall be filled accordingly.

ARTICLE II.

Of carrying the laws into effect in new counties.

SECTION
21. Governor to appoint a sheriff; to issue a writ of election.
22. Sheriff to appoint officers of election, their duties, &c.
23. Time and manner of notice to be given of elections; returns and certificates thereof, and commissions of persons elected.
24. Sheriff may administer oath of office to those elected.
25. Officers falling into a new county to continue until others are elected.
26. Suits to proceed and taxes to be collected as if no change.

Governor to appoint a sheriff; to issue a writ of election, &c.

SECT. 21. Whenever any act, passed at any session of the general assembly of this state, erecting any new county, shall take effect, it shall be the duty of the governor to issue a writ of election, directed to some person in such new county, whom he shall appoint to act as sheriff until the next general election, and until a sheriff is chosen and qualified, requiring him to cause

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an election to be held at such place or places in said county as he may direct, on such day as may be designated in the writ of election, for the purpose of electing two associate judges of the circuit court, one clerk of the circuit court, one recorder, and three commissioners of the county.

Sheriff to appoint officers of election; their duties.

SECT. 22. The person to whom such writ of election is directed shall have full power, and is hereby required, to appoint the necessary officers of such election; which officers so appointed shall act under the same rules, and be subject to the same penalties as are or may be provided by law for regulating general elections, and shall make return to the person acting as sheriff on the Wednesday following, at such place in the county as he may have directed.

Time and manner of notice to be given of elections; returns and certificates thereof, and commissions of persons elected.

SECT. 23. The person to whom the writ of election is directed in a new county, shall give at least ten days' notice of the time and place or places where such election is to be held, and also of the place where the return is to be made to him, by setting up written notices thereof in three of the most public places in each election district which he may establish in such county; and on the return of the election being made to him, and the votes being compared according to law, he shall give to each of the commissioners a certificate of his election and the time he is elected to serve, having due regard to the law; and shall also, within ten days thereafter, forward to the office of the secretary of state a certificate of the persons elected as associate judges and clerk of the circuit court and recorder of the county; which persons shall be commissioned and qualified into office in all respects as is provided by the constitution and laws of this state.

Sheriff may administer oath of office to those elected.

SECT. 24. The person acting as sheriff shall be fully authorized to administer such oaths as are required by the constitution and laws of this state; certified copies of which he shall file in the office of the clerk of the circuit court whenever it shall be established.

Officers falling into a new county, to continue until others are elected.

SECT. 25. All officers falling within the bounds of a new county shall continue to exercise the duties of their several offices until they are succeeded by others legally qualified to take their places.

Suits to proceed and taxes to be collected, as if no change.

SECT. 26. No suit or action of any nature whatsoever, commenced in any court of record, or before any justice of the peace, shall in any wise be affected by the laying off or organizing of any new county; and all taxes that may be due the state, or any county in the state, at the time of organizing any new county, shall be collected in the same manner as if such county had not been organized.

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CHAPTER 19.

OF THE RELIEF OF THE POOR.

SECTION

1. Overseers required to take an oath of office.
2. Shall be bodies corporate; their powers as such.
3. Each county required to support its poor; money therefor, how raised.
4. Settlement, how acquired. 1. By married persons. 2. By legitimate children. 3. By illegitimate children. 4. By one year's residence of males and unmarried females. 5. By one year's residence of minors and married women, whose parents and husbands have no settlement. 6. By apprentices. 7. Right to settlement, how lost. These provisions to apply to former as well as to future cases.
5. Overseers shall have the care of the poor.
6. Overseers shall advertise and let out the support of the poor.
7. County commissioners may pay the allowances to the poor themselves.
8. Overseers shall examine as to ill treatment of the poor, and make deductions from pay.
9. A record of the names of the poor to be kept.
10. What physicians shall be employed.
11. Poor may apply to the county commissioners if the overseers refuse relief.
12. Persons having no settlement, to be provided for where found.
13. Estates of husbands abandoning their wives, and of parents their children, may be seized for their support; proceedings, &c.
14. Warrant to be returned to circuit court, and order of sale made, &c.
15. When no estate, court may order payment of reasonable sum, and imprisonment for failure.
16. Any husband or parent neglecting to provide, may be arrested and recognized to appear at the next circuit court.
17. Justice to issue a warrant for such arrest.

SECTION

18. Such complaint and recognizance to be filed in clerk's office by justice, and recorded.
19. Court may assess a proper sum and enforce its payment.
20. Proceeds of forfeited recognizance in such cases to be applied to the support of the wife or children.
21. Temporary relief may be granted to pauper where not settled.
22. Pauper may be removed to place of legal settlement, how relieved if not able to be removed.
23. When an appeal may be had from order for removal of a pauper, and proceedings thereon.
24. Appeal, when to stand for trial; notice thereof.
25. Court may permit the order of removal to be amended.
26. Overseers shall receive paupers so removed.
27. Overseers, when to report the amount necessary for support of the poor; same, how paid.
28. Compensation of overseers.
29. Overseer removing, shall deliver books, &c.; so also in case of death, executor, &c. to deliver.
30. Overseers to forfeit six dollars for refusal to accept office; like penalty on justices of Knox county for like refusal.
31. Overseers to report their accounts at May session; how audited and paid.
32. Commissioners to settle with overseer at least once a year and allow them compensation.
33. Temporary relief to strangers, how granted—funeral expenses of poor persons, how defrayed.
34. Commissioners may establish asylums and appoint superintendents.
35. Duties of superintendents.
36. Commissioners may levy a tax to pay for land and buildings for asylum.
37. Paupers to be removed to asylum and employment provided.

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SECTION
38. Superintendent to give bond and make reports — commissioners to make annual inspection of asylum.
39. Children in asylum to be educated.
40. Superintendent to employ a teacher for that purpose, and superintend education.
41. Superintendents to possess the powers and perform the duties of a supervisor.
42. Asylum may be discontinued and sold.
43. Commissioners may levy a tax for the support of the poor.
SECTION
44. Overseers, &c., may plead the general issue and give special matter in evidence.
45. Rights accrued to counties under former laws not to be affected.
46. Appeals may be taken from any decisions of a justice under this chapter.
47. Board of visiters for each asylum may be appointed except in Lawrence and Decatur counties.
48. Compensation of visiters.

ARTICLE 1.

SECTION 1. Each overseer of the poor, elected or appointed according to law, shall, before he enters on the duties of his office, take an oath or affirmation that he will discharge his duties faithfully and impartially. Overseers required to take oath of office.

SECT. 2. The overseers of the poor for the several townships, shall, forever hereafter, be, in name and in fact, and they are hereby declared to be, bodies politic and corporate in law to all intents and purposes; and shall have perpetual succession; and by the name and style of "The Overseers of the Poor," of their respective townships, may sue and be sued, plead and be impleaded, in all courts of judicature; and by such name may purchase, take, or receive any lands, tenements or hereditaments, goods, chattels, sum or sums of money, to and for the use of the poor of their respective townships, of the gift, alienation, or devise of any person or persons whomsoever; to hold to them, the said overseers and their successors in office, in trust, for the use of the poor, forever. To be bodies corporate—their powers as such. For the election of overseers, see chapter 4; section 26; and chapter 5, section 66.

SECT. 3. Every county shall relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need thereof, and the board of county commissioners may raise money for the support and employment of the poor in the same way and manner as in the forty-third section of this chapter is provided. Counties required to support their poor —money therefor, how raised.

SECT. 4. Legal settlements may be acquired in any county, so as to oblige such county to relieve and support the persons acquiring such settlement, in case they are poor and stand in need of relief, as follows: Settlement, how acquired.

1. A married woman shall always follow and have the settlement of her husband, if he have any within the state, otherwise, her own at the time of marriage, and if she then had any settlement it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her settlement and the husband shall want relief, he shall receive it in the place where his wife shall have her settlement. —by married persons.

2. Legitimate children shall follow and have the settlement of their father, if he have any within the state, until they shall gain a settlement of their own; but if the father have no settle- —by legitimate children.

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ment, they shall, in like manner, follow and have the settlement of their mother, if she have any.

—by illegitimate children.

3. Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any within the state; but neither legitimate nor illegitimate children shall gain a settlement by birth in the place where they were born, unless their parent or parents had a settlement therein at the time.

One year's residence by males and unmarried females.

4. Every male person, and every unmarried female over the age of twenty-one years, who shall have resided in any county of this state one whole year without interruption, shall thereby gain a settlement in such county.

One year's residence minors and married women whose parents and husbands have no settlement.

5. Every minor whose parent, and every married woman whose husband, has no settlement in this state, who shall have resided one whole year, without interruption, in any county in this state, shall thereby gain a settlement in such county.

Apprentices.

6. Every minor who shall be bound as an apprentice to any person, shall, immediately upon such binding, if done in good faith, thereby gain a settlement where his or her master or mistress has a settlement.

Right to settlement, how lost.

7. Every settlement when once legally acquired shall continue until it shall be lost or defeated by acquiring a new one in this state, or by wilful and uninterrupted absence from the county in which such legal settlement had been gained, for one whole year or upwards; and upon acquiring a new settlement, or upon the happening of such wilful and uninterrupted absence, all former settlements shall be defeated and lost.

Provisions to apply to former as well as to future cases.

And the provisions of this section shall apply to cases of settlements begun to be acquired, or lost, or defeated, as well before as after the provisions of this chapter shall go into effect.

Overseers to have care of the poor.

SECT. 5. The overseers of the poor in each township shall have the oversight and care of all poor persons in their township so long as they remain a county charge, and shall see that they are properly relieved and taken care of in the manner required by law.

Overseers to advertize and let out the support of the poor.

SECT. 6. It shall be the duty of the overseers of the poor in such counties as have in them no common poor house established by law, two weeks next preceding the first Monday of May in each year, to give public notice, by having published in the newspaper or newspapers of their respective counties, or by posting upon the court house door, and in other public places in such counties, an advertisement certifying the poor that are to be provided for, and asking for sealed proposals for their maintenance during said year; which sealed proposals shall be opened and acted on by said overseers on said day; but nothing herein contained shall prohibit any overseers of the poor from receiving and accepting propositions at any time for the keeping of such poor persons as may, in the interim, become a county charge.

County commissioners may pay allowance to the poor themselves.

SECT. 7. The board of county commissioners may, in their discretion, allow and pay to poor persons who may become chargeable as paupers, and who are of mature years and sound

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mind, and who, from their general character, will probably be benefitted thereby, such annual allowance as will not exceed the charge of their maintenance in the ordinary mode, the said board taking the usual amount of charges in like cases as the rule for making such allowance.

Overseers shall examine as to ill treatment of poor, and make deductions from pay.

SECT. 8. It shall be the duty of said overseers of the poor, on any complaint made to them in behalf of the poor, to examine into the ground of such complaint; and if, in their judgment, the poor have not been sufficiently provided with the common necessaries of life, or have, in any respect, been ill treated by the person or persons under whose charge they shall have been placed, to withhold any part of the compensation allowed to such persons keeping them, as such overseers may deem reasonable and proper.

Record of names of poor &c. to be kept.

SECT. 9. The said overseers of the poor shall enter in the poor book of their respective townships, all poor persons in their townships who are unable to take care of themselves, and who shall, in their judgment, be entitled to the benefit of the provisions of this chapter, together with the date of such entry.

What physicians shall be employed.

SECT. 10. In all cases when medical aid for the poor may be required, the overseers shall procure such physicians to attend to them as the sick shall prefer; and in case no preference is signified, the said overseers shall employ such best physician in the county as can be procured.

Poor persons may apply to county commissioners if overseers refuse relief.

SECT. 11. If any poor person shall suppose that he or she is entitled to the benefit of the laws for the relief of the poor, and the overseers of the poor of the township in which he or she resides shall refuse to give such person the benefit thereof, upon application of such person the board of county commissioners may, if they should think proper, direct the said overseers to receive him or her upon the poor list on his or her application therefor.

Persons having no settlement, to be provided for where found.

SECT. 12. If any one within the description of poor persons specified in this chapter, shall be found in any county or township, and the overseers of the poor of such township shall be unable to ascertain and establish the last place of legal settlement of such person, they shall proceed to provide for such person in the same manner as other poor persons are hereby directed to be provided for.

Estates of husbands abandoning their wives, and of parents their children, to be and how seized for their support.

SECT. 13. Whereas it sometimes happens that men separate themselves, without reasonable cause, from their wives, and desert their children, and women also desert their children, leaving them a public charge, although such person may have estates, which would contribute to the maintenance of such wives or children: therefore, the overseers of the poor of the proper township or place, having first obtained an order or warrant directed to them from a justice of the peace of the county or place where such wife or children shall be so left or neglected, may take and seize so much of the goods and chattels, and attach and receive so much of the annual rents and profits of the lands and tenements of such husband, father, or mother as said

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justice shall order and direct by such warrant, as a provision for such wife's maintenance, or for the support of such child or children, as the case may be.

Warrant to be returned to circuit court and order made for sale, &c.

SECT. 14. Such warrant or order being returned to and confirmed by the next circuit court of the county, such court shall make an order to the overseers to dispose of such goods and chattels, by sale or otherwise, or so much thereof, for the purposes aforesaid, as said circuit court shall think fit, and to receive so much of the rents and profits of said lands or tenements as shall be ordered and set apart by said court.

When no estate, court may order payment of a certain sum, and imprisonment for failure.

SECT. 15. If no estate, real or personal, of such husband, father, or mother, can be found with which provision can be made as aforesaid, the court shall order the payment of such sums as they shall think reasonable for the maintenance of any wife or children so neglected, and shall commit such husband, father, or mother to the common jail of the county, there to remain until he or she shall comply with said order, give surety for the performance thereof, or be otherwise discharged by the court.

Husband or parent neglecting to provide, may be recognized to appear at next circuit court, or be imprisoned.

SECT. 16. On complaint being made to any justice of the peace in any county by the overseers of the poor of the proper township, of any wife, child, or children being neglected or left unprovided for, such justice shall take a recognizance, with sufficient surety, payable to the state of Indiana, from the husband, father, or mother, neglecting as aforesaid, for his or her appearance at the next term of the circuit court of the county, there to abide the determination of said court; and for want of such surety shall commit such person to jail.

Justice to issue warrant for such arrest.

SECT. 17. To enforce the provisions of the preceding section, the justice of the peace may issue his warrant, directed to any constable, who shall, by virtue thereof, arrest such person against whom such complaint is entered, and bring him before such justice of the peace, that said complaint may be heard and determined.

Recognizance and complaint to be filed in clerk's office, and recognizance recorded.

SECT. 18. Such recognizance, when taken, shall immediately thereafter be filed by the justice in the clerk's office of the proper court, together with the complaint, and such recognizance shall be recorded by the clerk.

Court may assess a proper sum and enforce payment.

SECT. 19. The court shall enquire into the truth of such complaint, and if the same be found to be true, they shall make an order requiring such person to provide for his family according to his ability, by assessing such stated sum or allowance for that purpose as may be just and right, and may enforce the same by judgment and execution, or such other mode or process as may be found necessary.

Proceeds of forfeited recognizance to be applied to support of wife or child.

SECT. 20. If such person fail to appear in discharge of his said recognizance, the same shall be forfeited, and execution may issue as in case of a forfeited recognizance in a criminal proceeding, and the amount thereof, when collected, shall be applied to the support of such wife, or child, or children, as the case may be, by the overseers of the poor.

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Temporary relief may be granted to pauper when not settled.

SECT. 21. Whenever any person entitled to temporary relief as a pauper, shall be in any township in which he has not a legal settlement, the overseers of the poor thereof may, if the same is deemed advisable, grant such relief by placing him or her temporarily in the poor house of such county, if there be any, to be employed therein so far as he or she is capable of any employment.

Pauper may be removed to place of legal settlement; if not able to be removed, how relieved.

SECT. 22. Upon complaint of any overseer of the poor, any justice of the peace may, by his warrant, directed to and to be executed by any constable, or by any other person therein designated, cause any poor person found in the township of such overseers likely to become a public charge, and having no legal settlement therein, to be sent and conveyed at the expense of the county to the place where such person belongs, if the same can be conveniently done; but if he or she cannot be so removed, such person shall be relieved by said overseers whenever such relief is needed.

When appeal may be had from order for removal of pauper, and proceedings thereon.

SECT. 23. If the overseers of the poor of any township in any county in this state, to which any pauper shall have been removed as above provided, shall feel themselves aggrieved by such order of removal, they may at any time within twenty days after such removal shall be known to them, appeal from the decision of the justice ordering such removal, to the circuit court of the county from whence the removal was ordered to be made, such appeal to be taken, tried, and determined, and costs adjudged, as in other cases of appeals from the judgment of a justice of the peace, and the order of removal may be vacated or affirmed according to the law and the right of the case.

When to stand for trial, and notice thereof.

SECT. 24. Such appeal shall be heard at the term of the court next after the same is filed therein, if in the opinion of the court, reasonable notice of the appeal has been given to the opposite party; but if not thus given, the cause shall stand continued until the next term of the court, and notice of the appeal be then given, if not before done.

Order of removal may be amended.

SECT. 25. If the order of removal is defective, the court shall permit the same to be amended without costs, and after such amendment is made, the appeal shall be heard and determined as if such order had not been defective.

Overseers required to receive paupers so removed.

SECT. 26. If any person be removed by virtue of the provisions of this chapter, from any county, township, or place to any other place within this state, by warrant or order, under the hand and seal of any justice of the peace, as herein before provided, the overseers of the poor of the township or place to which the said person shall be removed, are hereby required to receive such person, if he have a legal settlement in their county.

Overseers, when to report the sums necessary for support of poor; same, how paid.

SECT. 27. The overseers of the poor shall make a return to the county auditor of the sum or sums of money required for the poor of their respective townships, within fifteen days after every such contract herein before provided for shall have been made, which sums shall be paid quarterly out of the county

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treasury, upon the order of the board of county commissioners, in the same manner as other claims of the county are paid.

Compensation of overseers of the poor.

SECT. 28. The overseers of the poor in each township in the state shall be entitled to receive each one dollar per day for each and every day during which they shall be necessarily employed in the discharge of their several duties, to be allowed by the board of county commissioners on being satisfied of such service having been performed.

Overseer removing, to deliver over books, &c.

SECT. 29. If any overseer shall remove out of his proper township, he shall, previous to his removal, deliver over to some other overseer of the township from which he shall be so removing, all books, papers, and other things concerning his office; and upon the death of any overseer, his executors or administrators shall, within forty days after his decease, deliver over all things belonging to his office to some other overseer.

In case of death, executor, &c. to deliver.

Overseer to forfeit six dollars for refusing to accept office; like penalty on justice in Knox county for refusal.

SECT. 30. If any overseer of the poor of any township, and in the county of Knox if any justice of the peace, shall neglect or refuse to take upon himself the said office, he shall forfeit six dollars to and for the poor of such township, at the suit of the board of county commissioners of the proper county.

Overseers to report at May session; their accounts, how audited and paid.

SECT. 31. The overseers of the poor of the several townships shall annually, at the May session of the board of county commissioners of their respective counties, present their accounts and make report to said board generally of their proceedings for the past year; and when said board shall audit or allow any claim or account presented by such overseers of the poor, they shall draw on the county treasurer therefor, whose duty it shall be to pay the same out of any money in the county treasury not otherwise appropriated.

Commissioners to settle with overseers at least once a year, and allow their compensation.

SECT. 32. The boards of county commissioners of the several counties, are hereby directed to settle with the overseers of the poor in the several townships of their respective counties at least once in every year, and oftener if they shall deem the same necessary, and also to make to such overseers a reasonable compensation for their services.

Temporary relief to strangers, how granted; funeral expenses of poor, how defrayed.

SECT. 33. It shall be the duty of the overseers of the poor, on complaint made to them that any person not an inhabitant of their township is lying sick therein, or in distress, without friends or money, so that he or she is likely to suffer, to examine into the case of such person, and grant such temporary relief as the nature of the same may require; and if any person shall die within any township, who shall not leave money or other means necessary to defray his or her funeral expenses, it shall be the duty of the overseers of the poor of such township to employ some person to provide for and superintend the burial of such deceased person; the necessary and reasonable expenses whereof shall be paid by and upon the order of such overseers; and the board of county commissioners of the proper county, at any meeting of such board, shall examine all claims arising under the provisions of this section,

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and if found reasonable, shall direct the same to be audited and paid out of the county treasury.

Asylums may be established and superintendents appointed.

SECT. 34. It shall be lawful for the board of county commissioners in the several counties of this state, whenever they may deem it advisable, to purchase a tract of land in the name of their respective counties, and thereon to build, establish, and organize an asylum for the poor, and to employ some humane and responsible person or persons, resident in their respective counties, to take charge of the same, upon such terms and under such restrictions as such board shall consider most advantageous for the interest of the county.

Duties of superintendent.

SECT. 35. It shall be the duty of such superintendent or superintendents to receive into his or their care and custody, all persons who may have become a county charge as paupers, and to take such measures for the employment and support of such paupers, and to perform all such other duties as the board of county commissioners shall, from time to time, establish, order, and direct, consistent with the laws of this state.

Commissioners may levy a tax for the purchase of land and building asylum.

SECT. 36. To raise the sum necessary for the purchase of land and the erection and furnishing of the buildings for such asylums, the boards of county commissioners in the several counties shall have power to assess on property liable to be assessed for raising a county revenue, not exceeding one fourth in addition to the rates at which such property may be assessed by the existing laws.

Commissioners shall direct paupers to be removed to asylum and furnished employment. Overseers to remove paupers.

SECT. 37. So soon as the necessary provision may be made by the erection of suitable buildings the said board shall direct and order that all persons who have become permanent charges as paupers on the county, be removed to such asylum, and shall take such measures for the employment and support of such paupers as they may deem advisable; and thereafter the overseers of the poor shall, from time to time, as persons may become permanent charges to their respective townships as paupers, have such persons removed to the said asylums.

Superintendents to give bond and make report.

SECT. 38. Such superintendent or superintendents shall give bond, with freehold security, to said board in the penalty of five hundred dollars, conditioned for the faithful discharge of his or their duty; and he or they shall make to such board, at their sessions in May and November annually, a detailed report in writing, of the time and manner of the admission of each pauper; their health and fitness to labor; the results of their industry; and the expenses incurred; and it shall be the duty of the members of such board, in person, annually to inspect said asylum with regard to its fitness, in all respects, for the objects of its establishment.

Commissioners annually to inspect asylum.

Children in asylum to be educated.

SECT. 39. Whenever it shall be necessary and practicable, poor children of the asylums who cannot be bound out, or whom it may not be expedient to bind out as apprentices, shall be educated thereat, or otherwise, at the charge of the proper asylum, as far as the means thereof not necessary to be otherwise applied may extend.

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Superintendent shall appoint a teacher, and superintend education.

SECT. 40. It shall be the duty of the superintendent or superintendents of any asylum erected or established by law, to superintend and direct the education of such poor children, according to the preceding provisions of this chapter; and for the purpose of carrying the same into effect, with the least possible expense, it shall be the duty of such officer to appoint some most suitable pauper as a teacher, when proper and expedient.

Superintendents to have the powers, and perform duties of overseers.

SECT. 41. The superintendents of all asylums shall have all the powers by this chapter granted to the overseers of the poor, so far as the same may be necessary and expedient; and shall also in like manner present their accounts, and make report of their proceedings, and do and perform all other duties, so far as the same may be deemed requisite, as are herein prescribed and directed to be done by the overseers of the poor.

Asylum may be discontinu'd and sold.

SECT. 42. Any asylum or farm provided by the board of county commissioners for the poor, may be discontinued by such board, and the property, real and personal, relating thereto which belongs to the county may be sold, leased, or otherwise disposed of or applied, in such manner as may be best for the interests of the county.

Commissioners may levy a poor tax.
See ch. 7, sect. 14, and ch. 12, sect. 43.

SECT. 43. The board of county commissioners in the several counties of this state may, if they deem it expedient, annually, at their session at which the county tax is ordered to be levied and assessed, levy and assess a tax for the support of the poor of their respective counties, on objects from which the county revenue is or may be directed to be raised; the tax hereby authorized to be laid shall be collected by the same officers whose duty it may be to collect the state and county revenue, who shall pay the same accordingly into the county treasury.

Overseer, &c., when sued, may plead general issue, and give special matter in evidence.

SECT. 44. If any action shall be brought against any overseer of the poor, or superintendent, or other person who in his aid and by his command shall do anything concerning his office, he may plead the general issue, and under such issue he may give this chapter, and every special matter in evidence.

Rights accrued to county under former laws not to be affected.

SECT. 45. Nothing contained in this chapter shall be construed to affect any rights accruing, or which have accrued, to any county under any former law.

Appeals may be had.

SECT. 46. All decisions of any justice of the peace in any matter, proceeding, or suit, authorized by this chapter, may be appealed from in like manner, and under like regulations and restrictions of law as in other cases.

Board of visiters may be appointed, except in certain cases

SECT. 47. The board of county commissioners of any county, except the counties of Lawrence, Owen, and Decatur, may in their discretion appoint a board of visiters annually, to consist of one person from each township in the county, or a less number of persons, as they may think best, to visit, at least once during the year, the asylum of such county, and to report to the commissioners its condition, and the treatment, management, and condition of the inmates thereof.

Their compensation.

SECT. 48. Such visiters shall receive such compensation as the board shall adjudge reasonable.

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CHAPTER 20.

OF PROVIDING FOR THE SUPPORT OF ILLEGITIMATE CHILDREN.*

SECTION

1. Complaint, how made, and process thereon.
2. Justice to examine complainant on oath.
3. If found guilty, the accused shall settle with the woman; give bond to the overseers and pay costs.
4. Otherwise shall be recognized to appear at the next term of the circuit court or be committed.
5. Recognizance to be filed and recorded in circuit court; may be given after commitment.
6. A transcript of the proceedings before justice; the complaint and examination to be filed in circuit court.
7. The woman being unable to appear, the accused shall be recognized to the next term, or committed;
8. Or the former recognizance shall stand over if not objected to.
9. If not guilty is pleaded, jury trial shall be had.
10. The woman shall be a competent witness unless, &c.
11. Her written examination before justice to be evidence.
12. Duty of the jury in considering the testimony of the woman.
13. Being found guilty, accused shall be charged with the maintenance of the child and with costs.
14. Court shall specify the sum and times of payment, and require security.
15. Judgment shall be rendered therefor, and the security entered as for stay of execution.
16. On failure to pay, execution to issue.
17. Failing to give security, accused to be committed, and execution to issue for payments as they fall due.

SECTION

18. The mother failing to prosecute, overseers of the poor may do so.
19. The mother shall not discontinue suit if the overseers will prosecute same.
20. Same proceedings shall be had as if prosecuted by the mother.
21. Examination before justice shall proceed whether accused is arrested or not.
22. Justice to file transcript in circuit court, &c.; process thereupon to issue.
23. Defendant to give bail when arrested, or be imprisoned.
24. If defendant shall escape from arrest, or abscond after complaint is made, notice of pendency of suit shall be given
25. Cause heard whether he appear or not,
26. And judgment rendered as if he had appeared.
27. Filing transcript of proceedings before justice when to be a lien on real estate.
28. Execution may issue to any county, and the money levied be paid to the clerk.
29. Money, when to be paid to overseers.
30. Scire facias to issue on recognizance being forfeited.
31. Judgment may be rendered after service, or on two returns of not found; proceeds to abide the direction of the court.
32. Or at request of sureties, judgment may be rendered for the support of the child, as on confession.
33. Such judgment, when to bar all other proceedings.
34. Force and effect of such judgment.

SECTION 1. When any woman who has been delivered of a bastard child, or who is pregnant with a child which, if born alive, will be a bastard, shall make complaint thereof in writing Complaint, how made, and process thereon.

*The prosecution must be in the name of the state. *Woodkirk* v. *Williams*, 1 Blackf. 110. Ib. *Dickerson* v. *Gray*, 2 Blackf. 230.

The provisions of the act relative to crimes and punishments, requiring certain actions to be brought within one year next after the offence committed, do not apply to prosecutions for the support of illegitimate children. *The State* v. *Stafford*, 2 Blackf. 412.

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to any justice of the peace,* against the person whom she accuses of being the father of the child, such justice shall issue his warrant against the party accused, directed to the sheriff or one of the constables of his county, commanding such officer forthwith to take and bring such person before the justice to answer such complaint.

Complainant to be examined on oath.

SECT. 2. Upon the return of such warrant, the justice, in the presence of the accused person, if he shall have been brought before the justice, and if not, then in his absence, shall proceed to examine such woman on oath respecting the accused, the time when, and the place where, she was begotten with child, and such other circumstances as may be just and proper to establish the truth of such accusation; and such accused, if present, may be heard in his justification, and may, by himself or counsel, ask any reasonable and proper questions necessary to his defence.

The accused, if found guilty, shall settle with the woman, give bond to the overseers, and pay costs.

SECT. 3. The questions put to such woman on such examination and her answers thereto, shall be reduced to writing by the justice, and if, upon hearing the same and such other testimony as may be produced, it shall appear to the satisfaction of the justice that such accused person is the father of the child so begotten, he shall pay to such woman such sum or sums of money or property as she may agree to receive in full satisfaction; and shall also enter into bond to the overseers of the poor of the proper township of such county where such woman has her legal settlement, and to their successors in office, conditioned to save such county free from all charges towards the maintenance of such child; and upon the accused person complying with the provisions and requisitions of this section he shall be discharged by the justice upon the payment of the costs of such prosecution.

Otherwise, shall be recognized to appear at the next circuit court, or be committed.

SECT. 4. In case such accused person shall fail or refuse to comply with the provisions of the preceding section, such justice shall require him to enter into a recognizance to the state of Indiana, with sufficient sureties, in a sum not less than one, nor more than five hundred dollars, to appear at the next term of the circuit court of such county, to answer such accusation and to abide the judgment and order of the court thereon; and if he fail or refuse to enter into such recognizance, such justice shall cause him to be committed to the jail of the county, there to remain to answer such complaint.†

*In prosecutions for bastardy under the statute it must appear that the mother of the child was unmarried and a resident of the state. *Smith* v. *The state*, 4 Blackf. 188.

The mother's affidavit need not state that she is resident of the county, or that the child was born there, or that it is alive. 4 Blackf. 269.

Any unmarried woman resident in the state, may make complaint before a justice, under the statute, against the father of her bastard child, without regard to the place where the child was born. *Cooper* v. *The state*, 4 Blackf. 316.

†It is no objection to such a recognizance that it is entered into by a third person and not by the party himself. *The state* v. *Lewis*, 4 Blackf., 20. See also *Trimble et al.* v *The state*, ib. 42.

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Recognizance may be given after commitment—recognizance, where and when to be filed and recorded.

SECT. 5. If the accused be committed to jail he may be released therefrom by entering into a recognizance before any judge of the circuit court, with condition as above herein required; every such recognizance, whether taken by a justice of the peace or a judge of the circuit court, shall be filed by the officer taking the same, with the clerk of the circuit court on or before the first day of the term of said court next thereafter, and shall be recorded by said clerk, and shall have the like force and effect that other recognizances have by law.

Transcript, complaint, and examination to be filed in the circuit court.

SECT. 6. Such justice, whenever the accused person shall fail to comply with the provisions of the third section of this chapter, shall, immediately after his decision in the premises, file a transcript of his proceedings, together with said complaint and the written examination of such woman, in the clerk's office of the proper circuit court.

Woman being unable to appear, accused shall give new recognizance to appear at the next term, or be committed:

SECT. 7. If, at the term of the court at which such accused person was required to appear, the woman shall be unable to attend, the court shall order the defendant to enter into another recognizance with sufficient sureties and conditioned for his appearance at the next term of such court, then and there to answer such accusation, and to abide the order and judgment of the court thereon; or, in default of such recognizance, such defendant shall be committed, by the order of the court, to the jail of the county to answer such complaint:

Or the former recognizance shall stand over unless objected to.

SECT. 8. Or in the case specified in the last preceding section, if the surety or sureties in the original recognizance shall not appear and object to the continuance of such recognizance, the same may be continued by the court, and shall remain and have the same force and effect as a new recognizance taken in court on the continuance of such cause.

Not guilty being pleaded, jury trial to be had.

SECT. 9. Whenever such defendant shall plead not guilty to such accusation before the court, the court shall order the issue to be tried by a jury.

The woman shall be a competent witness, unless a convict.

SECT. 10. Such woman shall be admitted as a competent witness on such trial, leaving her credibility to the jury; but if she shall have been convicted of an infamous crime, which would by law render her an incompetent witness in any other cause, her testimony shall not be received on such trial.

Her written examination before justice to be evidence.

SECT. 11. Such woman, or the defendant, may give her examination before the justice in evidence on such trial, for the purpose of sustaining, contradicting, or impeaching her testimony, as the case may be.

Duty of the jury in considering the testimony of the woman.

SECT. 12. On the trial of such issue, the jury shall, on behalf of the defendant, take into consideration any want of credibility in such woman, also any variation in her testimony before the justice of the peace, and before the jury, and also any other confession or statement made by her at any time, which does not agree with her testimony; or any other matter or circumstance affecting or touching her credibility, adduced on such trial.

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Accused, on being found guilty, shall be charged with the maintenance of the child and with the costs.

SECT. 13. If the jury find the defendant guilty, or such defendant shall confess such accusation before the court, he shall be adjudged the putative father of such child, and shall stand charged with the maintenance thereof, in such sum or sums as the court shall order and direct, and with the payment of the costs of the prosecution.

Court shall specify the sum and times of payment, and shall require security.

SECT. 14. The court shall specify the sum or sums which such defandant shall pay for the maintenance of such child, and the time and manner of payment thereof; and shall require him to give sufficient sureties for such payment, and the due performance of such order as the clerk of such court shall approve. *

Judgment to be rendered therefor, and the surety entered as for stay of execution.

SECT. 15. The sum or sums specified for such maintenance shall be entered in the nature of a judgment upon the record, specifying therein the time or times at which the same shall be paid; and the security for the payment thereof shall be entered on the record in like manner as in cases of replevin bail for the stay of execution, and with the like force and effect.

On default of payment, execution to issue.

SECT. 16. When any sum of money required to be paid as above provided shall fall due, and default shall be made in the payment thereof, the clerk of such court shall issue execution for the amount and costs of execution, to be levied of the goods and chattels, lands and tenements of the principal and his surety or sureties, as in other cases of executions.

Failing to give security, accused to be committed, and execution may issue for the sums as they become due.

SECT. 17. If, upon being required to give security for the performance of the order and judgment of such court, such defendant shall fail so to do, he shall be committed by the court to the jail of the county, there to remain until he shall comply with such order, or until such court, on sufficient cause shewn, shall direct his discharge; and execution may in such case issue against his goods and chattels, lands and tenements, for any part of such judgment which may be due and payable.

The mother failing to prosecute, overseers may do so.

SECT. 18. When any woman has a bastard child, and neglects to bring a suit for the maintenance of such child, or commences a suit and fails to prosecute the same to final judgment, the overseers of the poor of any township interested in the support of such bastard, may institute a suit, as such overseers, in their corporate name, against the person who shall have begotten such bastard, unless sufficient security be given to such overseers and their successors in office, to save and indemnify the county from all charges and expenses on account of the support and maintenance of such bastard child.

Mother not allowed to discontinue suit, if the overseers will prosecute.

SECT. 19. When any suit has been instituted on behalf of any woman against any person charged as the father of her

* The order of the court, in a case of bastardy, after stating what sum the father must pay for the maintenance of the child, should be, That the defendant pay the money to the person who shall maintain the child, or become entitled to the same by law; and that he enter into a recognizance with one or more sureties, for the performance of the order. *Dickerson* v. *Gray*, 2 *Blackf.* 230.

The circuit court may render judgment for such sum or sums of money as it thinks proper for the maintenance of the child, and also a judgment for costs; but the damages for the seduction of the mother, or the expenses of her lying in, are not recoverable in this prosecution. *Allen* v. *The State*, 4 *Blackf.* 122.

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bastard child, for its support and maintenance, and she shall at any time fail or refuse to prosecute the same any further, or shall offer to dismiss or discontinue the proceedings therein, the court shall not dismiss or discontinue the same, or enter a non-suit, if the overseers of the poor of the proper township will take up and prosecute such suit thus instituted, and the sureties in the recognizance of such defendant shall remain bound as if the prosecution of such suit were continued at the instance of such woman.

Like proceedings and judgment as if prosecuted by the mother.

SECT. 20. Any suit instituted or continued as provided in the two last preceding sections, shall in all respects be prosecuted, continued, and conducted, and like judgments and orders shall be made therein, and the same be secured and enforced in like manner, and with like effect, as in cases where the suit is instituted and prosecuted to final judgment and execution, by the mother of such bastard child.

Justice shall proceed with examination, whether accused is arrested or not.

SECT. 21. Whenever a warrant shall be issued by a justice of the peace for the apprehension of any person charged as the father of a bastard child, and the officer executing the same shall fail to arrest such defendant, or having arrested him he shall escape out of custody, the justice shall proceed to examine such woman, and reduce her examination to writing.

Justice to file transcript, &c. in ten days—process thereupon to issue.

SECT. 22. Within ten days after such examination, the justice shall file a transcript of his proceedings in the premises, the complaint of such woman, and her written examination in the clerk's office of the proper circuit court; and upon the filing thereof, such clerk shall issue a warrant, directed to the sheriff of any county in this state where it may be alleged such defendant may be found, therein commanding such sheriff to take such defendant into his custody to answer such complaint.

Defendant arrested thereon shall give bail or be imprisoned.

SECT. 23. Any person arrested, as prescribed in the last section, may discharge himself out of custody, by entering into a recognizance with sufficient surety, to be approved by the sheriff, in the sum of five hundred dollars, conditioned that he will be and appear at the next term of the circuit court of the county from which such writ was issued, to answer said complaint, and abide the order and judgment of the court therein; or if he fail to give such recognizance, it shall be the duty of the sheriff to commit him to the jail of the county, there to be held to answer said complaint.

Publication to be made, if defendant shall escape or abscond after complaint.

SECT. 24. If the defendant shall, after arrest, escape from custody, or if it shall appear to the satisfaction of the court by competent proof, that such defendant has absconded after the making of such complaint, so that process cannot be executed upon him, such court shall order notice to be published for three weeks successively in some newspaper printed in the county, if there be any such paper, and if not, then in some newspaper printed in this state, nearest thereto, notifying the defendant of the pendency of such complaint, and that unless he be and appear at the next term of the circuit court, the same will be fully heard and determined in his absence.

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Cause shall be heard, whether defendant appear or not.

SECT. 25. If at such term of the court, notice having been given as required in the last section, the defendant shall appear, such suit shall be heard in like manner as if such defendant had been brought before the court on process; but if he fail to appear, the same shall be heard, tried and determined in his absence; and a jury may be empannelled by the court to inquire whether or not he is the father of such bastard child.

And like judgment as if he had appeared.

SECT. 26. If he shall be found to be the father of such child, the court shall make a like order as above provided in cases where the defendant has appeared, and shall render judgment against him for such sum or sums as the court shall determine, for the maintenance of such bastard.

Filing of transcript, when to constitute a lien on real estate.

SECT. 27. In all cases where the defendant could not be found by the sheriff or other officer, or shall have escaped from arrest, the filing of the transcript of the justice, as provided in the twenty-second section of this chapter, shall, from the time of such filing, constitute a valid and effectual lien on all the real estate of such defendant situate in such county, for the payment of such judgment as may be rendered against him in such suit.

Execution may issue to any county, and the money levied shall be paid to clerk.

SECT. 28. When judgment is obtained in such case, execution to levy the amount and costs of suit may be issued into any county in this state, and when the officer executing such writ shall have made the amount of such judgment or any part thereof, he shall pay over the same to the clerk by whom such execution was issued.

Money, when to be paid to overseers.

SECT. 29. The money collected on a judgment obtained in any suit or prosecution at the instance of the overseers of the poor, shall be paid by the clerk to the overseers of the poor of the township where such mother shall have her legal settlement, the clerk first taking from such overseers a bond, with sufficient surety, payable to the state of Indiana, with condition that such overseers will properly and prudently apply the said moneys to the support of such bastard child, in such manner as the court shall have ordered and directed; and that in case such child shall die, they shall refund to such father the same or so much thereof as may remain unexpended.

Scire facias to issue on forfeited recognizance.

SECT. 30. Whenever any recognizance with sureties, which shall have been entered into by any person charged with being the father of an illegitimate child as aforesaid, shall be forfeited, by the failure of such person to appear and answer such charge, or to abide the judgment of the court thereon, a scire facias shall issue on such recognizance, against him and his sureties, requiring them to show cause why execution shall not issue to levy the amount of such recognizance.

Judgment on service, or on two returns "not found," proceeds to abide direction of court.

SECT. 31. If, upon such scire facias being returned "served," or if upon two returns of "not found," the said parties shall fail to show cause to the contrary, judgment for execution as aforesaid shall be rendered accordingly; and the amount when collected shall be paid to the clerk of the proper circuit court, to be disposed of pursuant to the order of the court in the premises.

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SECT. 32. If, however, the principal and sureties, or either of them, shall appear to such scire facias and request it, the court, instead of the judgment specified in the last section, shall enter judgment against the parties so appearing, for such sum or sums, not to exceed the amount contained in the recognizance, for the support of such bastard child, to be paid in like manner as if the principal had appeared to the original suit and confessed himself the father of such child.

Or at request of sureties, judgment as on confession may be rendered for the support of the child.

SECT. 33. The judgment rendered according to the provisions of the last preceding section, shall bar all further proceedings in the original suit, as also on the scire facias aforesaid, to have execution for the amount of such recognizance; but such judgment shall not be taken in such form as to bar the original suit, unless the amount thereof shall, in the opinion of the court, be an adequate allowance for the support of such bastard child, nor until the same shall be secured by sufficient replevin bail for the payment thereof, as in cases where judgment is rendered against such principal in the original suit.

Such judgment when to be a bar to all other proceedings.

SECT. 34. If any such judgment is rendered, the same shall be of the same binding force on the parties thereto, and the replevin bail, as judgment in personal actions; and execution to levy the amount thereof shall issue as in other cases.

Force and effect of such judgments.

CHAPTER 21.

OF THE TAKING UP OF ANIMALS GOING ASTRAY, AND WATER CRAFT AND OTHER ARTICLES OF VALUE ADRIFT.

SECTION

1. Taker up to give notice within five days.
2. If not claimed, property to be reported to justice, who shall appoint appraisers.
3. Taker up to make oath that brands have not been altered.
4. When and for how long estray shall be kept in the public pound.
5. Justice shall transmit a copy of the description and valuation to clerk, together with his fee.—Record to be made by clerk.
6. Estrays exceeding in value twelve dollars, to be advertised in a newspaper at the seat of government.
7. Clerk to transmit to printer copies of description and appraisement for publication together with one dollar.
8. Printer shall pay the postage, publish notice, and transmit a copy to the clerk of each circuit court.

SECTION

9. Property found adrift valued at over ten dollars to be advertised and how.
10. Property adrift not valued at over ten dollars, and estrays not over fifteen dollars, when to vest in taker up.
11. Property adrift valued at over ten dollars, and estrays other than horses, mules, and asses, valued at over fifteen dollars, not claimed, to be reported.
12. Justice to issue order for sale—proceeds, how disposed of.
13. Horses, mules, and asses, valued at over fifteen dollars, to be sold by sheriff—proceeds paid to county treasurer.
14. Credit to be given therefor to estray fund.
15. Fees of the taker up of estray.
16. Fees of taker up of articles adrift.

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SECTION
17. Fees to be paid by taker up for the justice, clerk, and printer.
18. Clerk to make record of estrays—fee therefor—inspection thereof to be without charge.
19. When property is sold, charges for keeping how settled and paid.
20. Owner may claim proceeds of sale within two years, then to vest in the county.
SECTION
21. The persons by whom, and the time when, animals may be taken up.
22. Taker up not to remove or injure property—penalty therefor.
23. Fatted hogs may be killed, when.
24. Value thereof to be paid over, or estray reported.
25. When taker up of stock hogs may pay value and keep the same.
26. Penalty on officers failing of their duty.

Taker up to give notice within five days.

SECTION 1. Any person or persons who shall take up any estray horse, mule, ass. sheep, hog, cattle, or goat, or any boat, flat, pirogue, canoe, raft, or other article of value adrift, shall, within five days after taking the same in possession, advertise the same in writing in three of the most public places in the township where such property is taken up, stating the time of taking up, and giving a particular description thereof.

Taker up to report to justice—appraisers appointed—their duty.

SECT. 2. It shall be the duty of the taker up, within fifteen days from the time of taking up any estray animal or property adrift, (unless the same shall have been previously claimed and proven by the proper owner,) to report the same to some disinterested justice of the peace in the township, who shall issue his warrant to three disinterested householders of the neighborhood, (unless they can be otherwise procured,) directing any two of them to appraise such property, whose duty it shall be to appraise the same and make report in writing to such justice, clearly describing the property and their valuation thereof; and shall, under oath, declare that said appraisement and description were made without partiality, favor, or affection.

Declaration of taker up as to brands, &c., required on oath.

SECT. 3. The taker up shall, at the time of making such report, state upon oath or affirmation, before such justice, that the marks, brands, or appearance of such property have not been altered by such taker up, nor by any other person to his or her knowledge since the same became estray or adrift, other than shall have been set forth in the report thereof, and shall be made in writing.

Taker up, when required to place estray in the county pound.

SECT. 4. It shall be the duty of the taker up of any estray horse, mule, or ass above the age of two years, to take the same to the pound of the proper county, (if there be one provided,) and keep the same therein from eleven o'clock, A. M., until three o'clock, P. M., of the first day of each of the two succeeding terms of the circuit court after the taking up of such estray, unless the same has been previously claimed and proven by the proper owner thereof.

Justice, when to transmit copy of description and valuation and fee to clerk. Record to be made thereof.

SECT. 5. It shall be the duty of any justice to whom any property, as aforesaid, shall have been reported, within ten days thereafter, to transmit to the clerk of the circuit court, a copy of the description and valuation thereof, together with the proper fee as hereinafter provided for: said clerk shall immediately enter such description and appraisement in a book to be kept for that purpose.

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What property shall be published in a newspaper.

SECT. 6. Any property taken up under the provisions of this chapter, except water crafts and other articles of value adrift, the appraised value of which exceeds twelve dollars, shall be advertised in some newspaper published at the seat of government, (and to be the one published by the state printer if there be one by him published).

Clerk to transmit copies of description and appraisement for publication.

SECT. 7. It shall be the duty of the clerk of the circuit court in each county in this state, to make out, at the commencement of each month, a correct copy of the description and appraisement of each estray of a greater value than twenty dollars, that may have been entered in his book of estrays in the month next preceding, and transmit the same to the state printer at Indianapolis, marking thereon "estray papers," together with the sum of one dollar for each advertisement, to pay the printer for the publication of the same and for other purposes.

Printer shall pay postage, print notice, and transmit a copy to the clerk of each circuit court.

SECT. 8. It shall be the duty of said state printer, on the receipt of such estray papers, to pay the postage thereon out of the money received therewith, and he shall keep a regular file of such estray papers by him so received; and within twenty days after the time prescribed for the said clerks to make their returns, he shall publish in a newspaper a copy of all such estray papers as may have been by him received, and not previously published, and transmit one copy of such publication free of charge to the clerk of the circuit court in each county in this state, to be filed and kept on file by said clerk in his office for at least two years, for the examination of any person who may desire it.

Property found adrift valued at over ten dollars to be advertised, and how.

SECT. 9. Any property adrift, the appraised value of which exceeds ten dollars, shall be advertised in some newspaper in the county, if there be one, and if not, then in the nearest paper thereto; and it shall be the duty of the clerk of the circuit court to furnish and forward to the printer a copy of the register thereof, together with the fee for publishing the same.

Certain estrays when to vest absolutely in taker up.

SECT. 10. Any property adrift, taken up under the provisions of this chapter, the appraised value of which does not exceed ten dollars, and is not claimed and proven by the proper owner within ninety days after the taking up thereof; and any animal astray, the appraised value of which does not exceed fifteen dollars, not claimed and proven by the proper owner within twelve months after taken up, shall vest absolutely in the taker up.

Certain estrays to be reported if not claimed.

SECT. 11. Any property taken up adrift, the appraised value of which exceeds ten dollars, not claimed and proven by the proper owner within ninety days after taking up, or animals astray other than horses, mules, or asses, the appraised value of which exceeds fifteen dollars, not claimed and proven within six months after taking up, shall be reported by the taker up to some justice of the peace of the proper township within five days after the expiration of the time specified herein.

Justice to issue order for sale;

SECT. 12. Such justice shall issue his warrant to some disinterested constable to dispose of the same at public sale, giving

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proceeds, how disposed of.

ten days' notice in writing of the time and place of sale, describing the property to be sold; and such constable shall, within five days after said sale, return said order, together with the proceeds of sale, to said justice, retaining one dollar for his services therein; and said justice shall immediately pay over to the county treasurer the proceeds of sale, after deducting the proper amount to be paid to the taker up as provided in this chapter, and fifty cents for his own fee, and shall take from the treasurer duplicate receipts, one of which he shall file in the office of the clerk of the circuit court, and the other with the county auditor.

Horses, &c. appraised to more than fifteen dollars, to be sold by sheriff, and proceeds paid to treasurer.

SECT. 13. Any horse, mule, or ass, taken up under the provisions of this chapter, the appraised value of which exceeds fifteen dollars, and which shall remain unclaimed and proven at the expiration of twelve months from the time of taking up, shall be by the taker up delivered to the sheriff of the proper county on the first day of the term of the circuit court next after the expiration of such time, and shall be by said sheriff sold at public sale, and after retaining one dollar for his services, and paying to the taker up his charges, as provided in this chapter, said sheriff shall pay the residue of the proceeds of such sale to the treasurer of the county within five days thereafter, taking from the treasurer duplicate receipts, and filing one of the same in the clerk's office, and the other with the county auditor.

Credit to be given to estray fund.

SECT. 14. All sums paid to the county treasurer under the provisions of this chapter shall be by such treasurer entered to the credit of the county under the head of estray fund.

Fees of taker up.

SECT. 15. The taker up of animals estray or property of value adrift, shall be entitled, as a reward for taking up, for each horse, mule, or ass, one dollar; each head of neat cattle, fifty cents; each sheep, goat, or hog, above six months old, ten cents: but where the owner reclaims and proves his property before the same is posted, the taker up shall only be allowed one half of the above reward.

Pay of taker up of articles adrift, how ascertained.

SECT. 16. The taker up of property adrift shall be allowed a reasonable sum, to be determined by some disinterested justice of the peace of the township; but either the claimant of any property taken up adrift, or the taker up thereof, may, if they require it, have a jury of six disinterested householders to determine what amount shall be just and reasonable for taking up and taking care of such property: the justice, constable, and jury, shall be allowed the same fees as are allowed in other cases.

Fees to be paid to justice, clerk, and printer—when, and by whom.

SECT. 17. The taker up of any property shall pay to the justice at the time of reporting, the following fees: Where printing is required, two dollars; fifty cents thereof for the justice, fifty cents for the clerk, and one dollar for the printer: where no printing is required, the aforesaid fees to the justice and clerk only shall be paid; except where the property taken up shall not exceed three dollars in value, then the justice shall make no return to the clerk, and his fee shall be twenty-five cents only.

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SECT. 18. The clerk shall keep a register of estrays, and shall allow any person who may desire it, the privilege to examine said record without fee, and where two or more estrays of the same species, or several articles adrift, are taken up by the same person at the same time, they shall be included in one entry and one advertisement, and the fees of the justice and clerk shall be the same as for one of such species only.

Clerk to make record of estrays; same to be inspected without charge —clerk's fees for record.

SECT. 19. When any property is sold under the provisions of this chapter, the taker up shall be allowed reasonable charges for keeping the same, together with the fees paid at the time of posting, and the legal charge for taking up, which charge shall be ascertained and allowed by some disinterested justice, who shall hear testimony; and in all cases where the property is used by the taker up, or other person by his permission, the taker up shall keep a correct account of the time such estray is used, and shall make oath thereto before the justice, and said justice shall deduct such sum as may be reasonable for the use thereof from the proper charge for keeping the same.

When property is sold, charges for keeping, how settled and paid.

SECT. 20. The owner at any time within two years after the taking up of any animal, when the same has been sold and the money paid into the county treasury, shall be entitled to receive the said money on proper proof before the county auditor; and after the expiration of two years from the time of taking up, the fund so paid to the treasurer, and remaining unclaimed, shall be absolutely vested in the county.

Owner may claim funds within two years after it shall vest in the county.

SECT. 21. No person shall be authorized to take into custody any horse or stock except at his or her place of residence, or to drive any stock out of the woods and take up the same; nor shall any animal be taken up between the first day of April and the first day of November, unless the same be found in the enclosure of the taker up, except that when any animal may be in the act of escaping from the owner or those entitled to the possession of the same, such animal may be taken up at any time where ever the same may be found.

The persons by whom and the time when animals may be taken up.

SECT. 22. The taker up of any animal or other property shall not remove or suffer such property to be taken out of the county where taken up, at any time for more than the space of three days, until the right of property shall absolutely vest in such taker up, and he shall be liable to the action of the owner for abuse or injury done to such property, and shall also be liable to indictment for a violation of the provisions of this chapter, and subject to be fined in any sum not exceeding double the value of the property so taken up.

Taker up not to remove or injure property; penalty therefor.

SECT. 23. When any person or persons shall take up any fatted hog or hogs, under the provisions of this chapter, the taker up may kill the same at any time after the expiration of one month after posting, without keeping the same one year, as provided in this chapter.

Fatted hogs may be killed, when.

SECT. 24. The said taker up shall forthwith, after killing said estray or estrays, pay the amount of the appraisement to the county treasurer, for the use of the owner or owners, after de-

Value of estrays so killed to be

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ducting the costs and charges of taking up, keeping, and killing said estray or estrays, which shall be liquidated as in other cases, or said taker up may, if he elect to do so, report said estray or estrays within ten days after the expiration of one month as aforesaid, to some disinterested justice of the peace of his township, who shall proceed in all respects as directed in the nineteenth section of this chapter.

paid over, or estray reported.

When taker up of stock hogs may pay value and keep the same.

SECT. 25. Any person or persons taking up any stock hogs may, if they elect to do so, pay the amount of the appraisement to the county treasurer at the expiration of six months after posting the same, and upon such payment the same shall be absolutely vested in such taker up; and such taker up shall in such case only be allowed his costs and reward, and shall not be allowed anything for his expenses of keeping.

Penalty on officers failing of their duty.

SECT. 26. Any officer who may fail to discharge any of the duties incumbent on him by the provisions of this chapter, shall be liable to indictment in any court having competent jurisdiction, and shall be subject to a fine of not less than five dollars nor more than one hundred dollars.

CHAPTER 22.

OF ENCLOSURES, TRESPASSING ANIMALS, AND PARTITION FENCES.

SECTION

1. What shall be deemed a lawful fence.
2. Lawfulness of fence to be determined according to the kind of animals trespassing.
3. Fence viewers to examine when trespass is committed.
4. When and how damages shall be assessed.
5. Form of fence viewers' certificate.
6. Owner of trespassing animal refusing to pay, viewers' certificate to be filed with a justice.
7. Proceedings thereon as in other cases, by suit, judgment, and execution.
8. Such certificate, how far evidence.
9. When fence is not lawful, owner thereof to pay viewers' fees.
10. Person killing trespassing animal liable to owner.
11. Viewers may examine witnesses on oath.
12. Viewers' fees.
13. Penalty on viewers for neglect.
14. Trespassing animal may be taken up as an estray.

SECTION

15. Taker up to notify owner.
16. Before advertising, shall procure certificate from viewers.
17. What such advertisement shall contain.
18. On what terms owner may have his property.
19. Same subject.
20. How owner may controvert the trespass, or the amount of assessment.
21. Same subject.
22. Taker up must prove the trespass.
23. Jury trial, when to be had.
24. Owner of animal to pay the damages found, and costs.
25. If no trespass is found, property to be restored, and taker up to pay costs.
26. Property sold as estray, taker up to have damages, &c. in addition to usual fees.
27. Fence, if not lawful, taker up to pay fees, and restore property.
28. If owner is unknown, to proceed as in case of estrays.

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SECTION
29. Viewers to be sole judges of the sufficiency of fences, and of repairs, &c. to be made by the different owners.
30. Liability of adjoining occupants to keep up fences.
31. Owners of a partition fence, how made to contribute to its rebuilding or repair.
32. Same subject.
33. Same subject.
34. Liability for repairs of owners improving adjacent lands, or lands adjoing an old enclosure.
35. Owner improving adjacent to an old enclosure, to pay his share for the partition fence—viewers to assess.
36. Amount so assessed, how recovered.
37. Partition fences to be kept up throughout the year.
38. Any owner may apply to fence viewers to settle disputes—who to act when fence is on township line.

SECTION
39. Manner in which viewers shall settle the same.
40. Their decision, how enforced.
41. Viewers to take into consideration former fences made by either party—any owner refusing to rebuild or repair, others may.
42. Charges therefor, as ascertained by viewers, may be recovered.
43. Viewers shall deliver certificates to parties.
44. Owner shall not remove a partition fence, if the other owners will pay therefor.
45. Fence built by mistake on the land of another may be removed, on payment of damages.
46. Such damages may be assessed by viewers.
47. Not to be removed if the materials for same were taken from the land.
48. Not to be removed while crop is on the ground.
49. Notice to be given when a division line is to be run.

SECTION 1. All fences consisting of rails, boards, timber, stone walls, or other materials, or ditches and hedges, which are such as good husbandmen generally keep, and which shall be held sufficient in the just judgment of the fence viewers within whose jurisdiction they lie, shall be deemed lawful fences. What deemed a lawful fence.

SECT. 2. Fence viewers, in judging of the lawfulness of a fence which has been broken down or passed through or over by trespassing animals, shall in all cases take into consideration the kind of animals by which such trespass was done, and shall determine the lawfulness of such fence as against such animals. Lawfulness of fence to be determined according to the kind of animals trespassing.

SECT. 3. If any domestic animal or animals shall trespass, by breaking into the enclosed field of any person, such person being injured thereby, may apply to the fence viewers of the township within which such field lies, who shall forthwith repair to the place where such injury was done, and there diligently and carefully examine the fence over or through which such trespassing animal or animals broke or entered into such field. Fence viewers to examine when trespass is committed.

SECT. 4. If, in the opinion of such fence viewers, such fence is a lawful fence, within the requirements of the first two sections of this chapter, they shall proceed from view and inquiry to assess the damages sustained by such applicant, from such trespassing animal or animals; which assessment, including the sum due for their services as fence viewers, they shall certify and deliver to the person sustaining such damages or to his agent. When and how to assess damages.

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Form of fence viewers' certificate.

SECT. 5. The certificate of the fence viewers shall be substantially in the form following:

——— county, }
——— township, }

The undersigned, fence viewers of said township, do certify that, at the request of A—— B——, we have this day diligently and carefully examined the enclosed field of the said A— B—, situate in the township aforesaid, in which a trespass has been done by (here specify the kind of animal or animals by which the trespass appears to have been done,) and that we have from view and inquiry assessed the damages which the said A— B— has sustained by such trespass at the sum of $——; our fees as such fence viewers amount to the sum of $—— each; making in damages and fees the sum of $——.

Given under our hands this —— day of ——, A. D. ——.

C. D. }
E. F. } Fence viewers.

Owner refusing to pay, certificate to be filed with a justice.

SECT. 6. If the owner of such trespassing animal or animals shall refuse to pay the said damages and fees on demand, the person so injured may deliver said certificate to a justice of the peace of the township where such owner shall reside.

Proceedings thereon.

SECT. 7. Upon the filing of such certificate, the justice of the peace shall issue a summons thereon against such owner, as in an action of debt, and shall proceed to trial, judgment, and execution, as in other actions.

Certificate of fence viewers, how far evidence.

SECT. 8. Such certificate shall be conclusive evidence of the lawfulness of such fence, and prima facie evidence of the amount of damages sustained by the plaintiff.

When fence is not lawful, owner to pay viewers' fees.

SECT. 9. If when called to examine any such field and alleged trespass, the fence viewers shall be of opinion that such fence was not a lawful fence, within the provisions of this chapter, the person calling upon them to examine the same shall pay the said fence viewers their legal fees for such examination on demand; and in case of his failure so to do, they may recover the same by a joint or several action of debt, before a justice of the peace, together with the costs of suit.

Persons killing trespassing animals, liable to owner.

SECT. 10. Any person who shall intentionally kill or injure any trespassing animal or animals, by driving them from his enclosed field or premises, or in any other manner, shall be liable to the owner for all damages so sustained.

Viewers may examine witnesses on oath.

SECT. 11. Such fence viewers, in making any view, examination, or assessment, pursuant to this chapter, shall have power to hear and examine witnesses under oath or affirmation, touching the subject matter of such view, examination, or assessment; and such fence viewers, or either of them, are hereby authorized to administer any oath or affirmation, when required by the provisions of this section.

Viewers' fees.

SECT. 12. Each fence viewer shall be entitled to receive fifty cents for every day's service rendered under the provisions of this chapter.

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SECT. 13. Any fence viewer who shall neglect or refuse to perform any of the duties enjoined on him by law, shall be liable to pay damages to the party aggrieved, not to exceed the sum of five dollars, to be recovered by an action of debt by such party before any justice of the peace having jurisdiction. Penalty on viewer for neglect.

SECT. 14. When any domestic animal shall break into the enclosure of any person and trespass thereon, such person, without regard to the season of the year, may take up such animal or animals as if the same were astray, whether the owner be known to him or not, and shall proceed in all respects as is provided and required by law of persons taking up estrays, except as hereinafter provided. Trespassing animal may be taken up as an estray.

SECT. 15. Such taker up shall, within twenty-four hours after such taking up, give notice to the owner of such animal or animals, if known and he can be conveniently found. Taker up to notify the owner.

SECT. 16. Such taker up, before he proceeds to advertise or post such trespassing animal or animals as estray, shall procure an examination and assessment of his damages, and a certificate thereof, and of the costs above provided, from the fence viewers of the proper township. Shall procure certificate from viewers before advertising.

SECT. 17. Such taker up of such trespassing animals, when he posts the same, shall specify in the notice and in all subsequent proceedings, that such animals were taken up while trespassing on the premises of such taker up, and shall also specify the amount of damages and costs sustained thereby, as assessed by the proper fence viewers. Advertisement what to contain.

SECT. 18. The owner of any such property shall not be entitled to demand or receive the same from such taker up, unless he proceed, as in the case of estrays, to claim and prove his property and pay the costs allowed in the case of estrays, and shall, in either case, pay the damages assessed by the fence viewers and the costs of such assessment, except as provided in the next section. On what terms owner may have property.

SECT. 19. If, before such assessment of damages by the fence viewers, the owner shall tender the charges for taking up and compensation for the damages sustained, and if the fence viewers shall assess such damages at the sum thus tendered for damages, or at a less amount, the taker up shall pay the costs of such assessment and be entitled to the amount of damages so assessed. Same subject.

SECT. 20. The owner of any property taken up as herein provided, may, at any time within five days after he has had notice of the assessment of damages, controvert, before the justice of the peace before whom such property is posted, or before any other justice of the peace of the same township, the amount of damages thus assessed by the fence viewers, or he may traverse and deny that such trespass was done by the property thus taken up. How owner may controvert the trespass or the amount assessed.

SECT. 21. Such justice shall immediately docket the matter as a cause to be tried between such taker up and the owner, and shall proceed to try the question as to the amount of the Same subject

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damages, or as to whether such trespass was done as complained of by such taker up, or to try and determine both such questions if both are required to be determined.

Taker up to prove the trespass.

SECT. 22. In every such case, if the owner deny that such trespass was committed by his property, it shall be incumbent on the taker up to establish such fact by competent proof.

Jury trial, when to be had.

SECT. 23. Such cause shall be heard and determined by the justice; or if the amount of damages assessed by the fence viewers be twenty dollars or more, or if the owner deny that such trespass was done by the property taken up, and such property be of the value of twenty dollars or upwards, then the cause may be heard and determined by a jury.

Owner to pay the damages found and costs.

SECT. 24. The damages, if any are assessed on such trial, together with the costs, shall be entered on the docket and shall be deemed the amount which the owner shall pay before he can recover his property.

If no trespass is found, property to be returned and taker up to pay costs.

SECT. 25. If it is decided on such trial that the trespass was not committed by the property thus taken up, judgment shall be rendered against such taker up for all costs relating thereto, and the property shall be forthwith returned to the owner without charge or cost against him.

Property sold as estray, taker up to have damages, &c., in addition to usual fees.

SECT. 26. In all cases where any property shall be sold as an estray taken up doing damage, the taker up, in addition to the usual costs and allowances in the case of estrays, shall be entitled to receive and retain out of the value of such estray, the damages sustained by such trespass and the costs of their assessment.

Fence not lawful, taker up to pay fees and restore property.

SECT. 27. If such fence viewers, when called to assess any damages in cases where the trespassing animal or animals are taken up, shall determine the fence to be unlawful, they shall recover their costs of the complainant, as in other cases; and the property taken up shall be released to the owner without any costs or charges, if such owner is known.

Owner unknown, how to proceed.

SECT. 28. If the owner is unknown, the taker up may nevertheless proceed with such animal or animals as in the case of estrays, if at the time the same were otherwise subject to be taken up as astray.

Viewers to be sole judges of sufficiency of fences, and of repairs, &c. to be made by different owners.

SECT. 29. The fence viewers of each township respectively shall be the sole judges of the sufficiency of partition fences, of the shares thereof to be kept in repair by each party, of the costs and charges to be borne by each party in repairing or rebuilding fences, and of the amount to which any party repairing a fence on the order of the fence viewers shall be entitled to recover of the other party.

Liability of adjoining occupants to keep up fences.

SECT. 30. The respective occupants of lands enclosed with fences, shall keep and maintain partition fences between their own and the next adjoining enclosures, in equal shares, so long as both parties continue to improve or use the same, unless otherwise agreed between them, in which case each party shall keep up, repair, and rebuild such fences, or so much thereof as he is bound by his agreement to do.

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Owner of partition fence, how made to contribute to its rebuilding or repair.

SECT. 31. In case any party shall neglect or refuse to repair or rebuild any partition fence which of right he ought to maintain, the aggrieved party may complain to the fence viewers of such township, who, after at least three days' notice to each party, shall proceed to examine the same, and if they shall determine that such fence is insufficient, they shall certify the same in writing to the delinquent occupant of the land, and direct him to rebuild or repair the same within such time as they shall deem reasonable, not exceeding thirty days; and if the fence is not rebuilt or repaired accordingly, it shall be lawful for the complainant to make or repair the deficient fence.

Same subject.

SECT. 32. When any deficient fence rebuilt or repaired by any complainant, as provided in the preceding section, shall be adjudged sufficient by the fence viewers, they shall adjudge the value of such building or repairing, and certify the same with their fees.

Same subject.

SECT. 33. Such complainant shall have a right to demand of the owner or occupant of the land where the deficient fence was, the sum so ascertained, and the costs of the fence viewers; and in case of neglect or refusal to pay the same when demanded, the complainant may recover the same in an action of debt, before any justice of the peace or circuit court having jurisdiction.

Liability to repairs of owners improving adjacent lands, or adjoining an old enclosure.

SECT. 34. When neighboring occupants or owners of lands shall improve lands adjacent to each other, or where any person shall enclose any land adjoining the land of another already enclosed, so that any part of the fence of one shall form the partition fence of the other, in both these cases the charge and expense of such partition fence, so far as it forms the partition fence of the field or fields of both parties, shall be equally borne by them.

Owner improving shall pay for adjoining fence—viewers to assess.

SECT. 35. Whenever any unenclosed land shall be enclosed, and any fence of another become a partition fence, the person making such enclosure shall pay the owner of such fence such sum as the fence viewers shall determine to be just and reasonable.

Amount assessed, how recovered.

SECT. 36. The fence viewers shall certify such sum as assessed by them; and if not paid on demand, the same may be recovered in an action of debt, as in other cases provided in this chapter.

Partition fences to be kept up all the year.

SECT. 37. All partition fences shall be kept up throughout the year, unless the occupants of the enclosures on both sides thereof shall otherwise agree.

Any owner may apply to fence viewers to settle disputes.

SECT. 38. Whenever any controversy shall arise as to the adjustment or payment of the costs and expenses of any fence, or about the rights of the respective occupants in any partition fence, or in any case of a partition fence the charge of building or repairing which is to be borne by the respective occupants of adjoining lands, either party may apply to the fence viewers of the township where the lands lie, or if the division line is the boundary between two civil townships,

How when the fence is the township line.

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then to the fence viewers of either township, to view and examine such fence.

How viewers may determine the same.

SECT. 39. Such fence viewers, after reasonable notice to the parties, shall proceed to view and examine any such fence, and may assign to each party his share of such fence to be built or repaired, and shall direct the time, not more than thirty days, within which such fence shall be built or repaired by said parties respectively; and shall make duplicate certificates thereof, one of which shall be delivered to each of said parties.

Decision of viewers, how enforced.

SECT. 40. In case any party shall refuse or neglect to erect or repair any part of the fence so assigned to him, the same may be erected or repaired by the other party, in the manner hereinbefore provided; and the charge and expense thereof shall be ascertained and certified by the proper fence viewers, and the same, and the costs and charges of such fence viewers, shall be recovered before any justice of the peace or court having jurisdiction in an action of debt.

Former fences made by one party to be taken into consideration by viewers.

SECT. 41. When in any controversy that shall arise between adjoining occupants as to their respective rights in any partition fence, it shall appear to the fence viewers that either of the occupants had, before any complaint was made to such fence viewers, voluntarily erected the whole fence, or more than his just share thereof, or otherwise become proprietor thereof, and no compensation had been made to such occupant or proprietor, the other occupant, when it shall become necessary to rebuild or repair such fence, may be required to rebuild or repair such fence, or so much thereof as is adjudged reasonable by the fence viewers, within the time specified as above; and if he fail or refuse so to do, the person first building such fence, or becoming the proprietor thereof may rebuild or repair the same.

Any owner refusing to build or repair, others may.

Charge of rebuilding ascertained by viewers may be recovered.

SECT. 42. When thus rebuilt or repaired, the charge and expense thereof shall be ascertained by the fence viewers, and certified by them as in other cases, and recovered in like manner by the party entitled thereto.

Viewers to deliver certificates to parties.

SECT. 43. Whenever the fence viewers shall make any determination respecting any matter provided for in this chapter, they shall without delay deliver a certificate thereof to each person affected by their decision, if he can be found, or leave such certificate at his usual place of residence, if he have any.

Owner not to remove a partition fence if other owners will pay therefor.

SECT. 44. When any party shall cease to improve or use his land, or shall lay open his enclosure, he shall not take away any part of the fence which forms a partition fence between him and the enclosure of any other person, if the owner or occupant will pay to such party the amount which the fence viewers shall determine to be the reasonable value of such partition fence.

Fence built by mistake on land of another to be removed on payment of damages.

SECT. 45. When any person shall, by mistake, erect any fence or make any enclosure on the land of another, and when the division line between him and such other person having been run by proper authority, such fence or enclosure is found to be on the land of such other person, such first person may enter

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upon such premises and remove the fence or fences which he may have built or made thereon, and take and carry away the materials thereof, within six months after such line has been run as aforesaid, upon his first paying or offering to pay to the other party all reasonable damages which may be occasioned by passing over the soil in making such removal.

Damages may be assessed by viewers.

SECT. 46. If the parties cannot agree as to such damages, they shall be assessed and certified by the fence viewers of the proper township, and the tender of the amount thus assessed shall be sufficient to authorize the party to enter on the premises and remove such fences and materials.

No removal if materials taken from the land.

SECT. 47. But none of the fences or materials above specified shall be removed, when the same have been made or taken from the land of such other person.

No removal while crop is exposed to injury.

SECT. 48. When the fence to be removed forms any part of a fence enclosing a field of the other party, such first person shall not remove or change the same, so as to open or expose such field, while any part of the crop is standing or remaining in any such field; but when such crop shall be removed or secured from injury, then he may immediately remove such fence and materials, although more than six months have elapsed since such division line was run or established.

Notice to be given when division line is to be run.

SECT. 49. When any party is desirous to have the line surveyed or established, by which any such fence will be affected, such party shall give the other person interested therein at least ten days' previous notice of the time and place when and where such survey is intended to be made.

CHAPTER 23.

PROVISIONS FOR THE SAFETY OF STAGE PASSENGERS.

SECTION

1. Drivers of stages not to run their horses or leave them unfastened.
2. Penalty therefor.
3. Stages to be provided with lamps—Penalty for omission.
4. Penalty on driver for failing to use lamps when necessary.
5. Driver found intoxicated, to be discharged — penalty on owner for refusal.
6. Proceedings to recover penalty.
7. Owners of stages liable for all penalties incurred by their drivers.
8. Owners paying such penalties, may recover same from drivers.
9. Copies of this chapter shall be kept up in each stage office—penalty for neglect.
10. Appeal allowed in all cases.

Drivers of stages not to run their horses or leave them unfastened.

SECTION 1. It shall not be lawful for the driver of any stage coach or stage wagon, for the conveyance of passengers for hire or reward, to run his horses for the purpose of passing any other stage coach or wagon; nor to run his horses to prevent being passed byany other stage coach or wagon; nor to

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run his horses for any other purpose whatever, when it shall appear imminently dangerous to the passengers in such stage coach or wagon; nor to leave the horses attached to any such stage coach or wagon, while passengers remain in the same, without first making his horses fast with some sufficient halter, rope, or chain, or by placing the reigns in the hands of some other suitable person to prevent their running.

Penalty therefor.

SECT. 2. If any such driver shall so offend against the provisions of this chapter, he shall forfeit and pay for every such offence, a sum not less than five nor more than twenty dollars to be recovered before any justice of the peace of any township where the offender may be found, in the name and for the use of the person who shall first make complaint and prosecute with effect for the same, if such prosecution be commenced within thirty days from the time of the commission of such offence.

Coaches to be provided with lamps.

Penalty.

SECT. 3. Every stage coach used for the conveyance of passengers, in the night time, for hire or reward, shall have affixed to the same in the usual manner, two good and sufficient lamps; and if said coach shall be at any time unfurnished for the space of forty-eight hours together with lamps as aforesaid, the owner or owners of said coach shall forfeit and pay for every such offence not less than ten nor more than thirty dollars, to be recovered, in all respects, by the person and in the manner prescribed in the second, fifth, and sixth sections of this chapter.

Penalty on driver failing to use lamps when necessary.

SECT. 4. If any driver of any such coach, furnished with sufficient lamps in the usual manner, shall drive such coach in the night time, when the road or track cannot be distinctly seen from the driver's seat, without having first lighted up said lamps and continuing them lighted during the night, he shall, for every such offence, forfeit and pay a sum not less than five nor more than twenty dollars, to be recovered, in all respects, according to the provisions of the second section of this chapter.

Driver found intoxicated to be discharged; penalty on owner for refusal.

SECT. 5. If any driver, whilst actually employed in driving any such coach or wagon, shall be guilty of intoxication to such a degree as to endanger the safety of the passengers therein, it shall be the duty of the owner or owners of such coach or wagon, on written notice of the fact being given to him or them, or his or their authorized agent, signed by one of said passengers and certified by him on oath, forthwith to discharge such driver from his or their employment; and every such owner or owners who shall continue such driver in his or their employ for more than three days after such notice shall be given as aforesaid, shall forfeit at the rate of five dollars per day for all the time during which he or they shall keep any such driver in his or their employment after such notice shall have been given, to be sued for and recovered before any justice of the peace of any township where such owner or owners may be

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found, by action of debt in the name and for the use of the person who shall first institute the suit. ARTICLE 1.

Proceedings to recover penalty.

SECT. 6. Any person prosecuting as aforesaid may sue out either a summons or capias, at his election; and if personal service be made, each party shall have a right to a trial forthwith, unless for good cause shewn, the justice shall think proper to grant an adjournment; and upon any judgment which may be rendered thereon there shall be no stay of execution, but the same shall forthwith issue and be served and returned as in other cases, unless an appeal shall be taken.

Owners liable for penalty incurred by driver.

SECT. 7. The owner or owners of any such stage coach or stage wagon shall be jointly and severally liable for the amount of any judgment recovered as aforesaid against any driver in his or their employ; if such driver shall abscond or fail to make satisfaction of such execution within thirty days from the date thereof, to be recovered in an action of debt founded on such judgment in the name of the original plaintiff, and prosecuted against any one or more of such owners; on which judgment, stay of execution and other proceedings shall be had as in other cases, unless an appeal shall have been perfected in the original cause.

Owner paying driver's penalty, may recover the same.

SECT. 8. If any owner or owners of any such stage wagon, or coach, shall voluntarily pay any judgment rendered against any driver in his or their employ as aforesaid, such owner or owners shall have a right to collect from such driver the amount so paid, with interest thereon; and may also set off the same against any demand which such driver may have against such owner or owners, or any of them.

Copies of this chapter to be kept up in stage office. Penalty.

SECT. 9. The owner or owners of any stage coach or wagon used for the purposes aforesaid, shall put and keep up in each of their offices a fair copy of this chapter; and for failure or neglect to do so, he or they shall forfeit and pay the sum of five dollars, to be recovered in the manner prescribed in the fifth section of this chapter.

Appeal allowed.

SECT. 10. Appeals shall be allowed to either party on all judgments of a justice of the peace, arising on proceedings instituted by virtue of the provisions of this chapter, under the same rules and restrictions as provided in cases of debt and assumpsit instituted before any such justice.

CHAPTER 24.

OF RECORDING TOWN PLATS, AND VACATING TOWNS AND PARTS THEREOF.

ARTICLE 1. Of recording town plats.
ARTICLE 2. Of the vacation of towns, lots, streets, alleys, public squares, and commons.

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ARTICLE I.

Of recording town plats.

SECTION
1. Plat to be recorded before sale of lots.
2. Donations expressed on plats to have the effect of warranty deeds.
3. Additions to towns to be in like manner recorded.
4. Plats to be acknowledged.
SECTION
5. Penalty for non-compliance with the provisions of this article, and how recovered.
6. If former plats are found defective, new ones shall be acknowledged and recorded.

Plat to be recorded before sale.

SECTION 1. Any person or persons, his, her, or their legal representatives, who may hereafter lay off any town within this state, shall, previous to the sale of any lots in such town, cause to be recorded in the recorder's office of the county wherein the same may lie, a correct copy of the plat of said town, with the public ground (if any there be), streets, lanes, and alleys, with their respective widths properly marked, and the lots regularly numbered in numerical order, and the size of the lots marked by reference to the plat of said town.

Donations expressed on plat to have the effect of deeds.

SECT. 2. Every donation or grant to the public, or to any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on the plat of the town wherein such donation or grant may have been made, shall be considered to all intents and purposes as a general warranty to the said donee or donees, grantee or grantees, for his, her, or their use, for the purposes intended by the donor or donors, grantor or grantors aforesaid.*

Additions to towns to be in like manner recorded.

SECT. 3. Every person hereafter laying off any lots in addition to any town in this state, shall, previous to the sale of such lots, have the same recorded under the like regulations as are provided for recording the original plat of said town, and thereafter the same shall be considered as an addition thereto.

Plats to be acknowledged.

SECT. 4. Every person whose duty it may be to comply with the foregoing requisitions, shall, at or before the time of offering such plat or other paper or papers for record, acknowledge the same before the recorder of the proper county, or some justice of the peace thereof; a certificate of which acknowledgment shall be, by the officer taking the same, endorsed on or annexed to such plat or other paper, and recorded therewith, and form a part of said record.

* Grants noted on recorded town plats operate, by virtue of the statute, as general warranty conveyances to the town, to individuals, or to the public, according to the intention of the grantor. *Conner* v. *New Albany P. T.*, 1 Blackf. 43.

The designation of a street on the recorded plat of an incorporated town, operates as a grant of a highway to the public. But were it an exclusive grant to the corporation, and the street on a river, it would not vest such a right to the soil as would authorize the establishment of a ferry under the statute. Ib.

The qualified possession which, by law, the president and trustees of an incorporated town have in the streets, is not sufficient to enable them, for an injury thereto, to maintain an action of trespass quare clausum fregit. Ib. p. 88.

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ARTICLE 2.

SECT. 5. Every person who may lay off any town, or any addition to any town in this state, and neglect or refuse to comply with the requisitions of this article, shall forfeit and pay for the use of said town, for every month that he may delay a compliance with the provisions aforesaid, a sum not exceeding one hundred dollars nor less than five dollars, to be recovered by action of debt, qui tam or otherwise, in the name of the treasurer of the county.

Penalty for non-compliance, and how recovered.

SECT. 6. Where any town plat heretofore or hereafter to be recorded, does not fully and clearly set out and describe the size of the lots, streets, alleys, and courses of the lines of said town, and where donations have been given or intended to be given, either to the public or to individuals, or to any religious society or societies, and it hath been neglected to insert the same on said plat, the proprietors of such town, or any of them, are hereby empowered and required to make out such other description as will more fully and clearly explain their true intentions; which shall be acknowledged, certified, and recorded as required in this article.

New plats shall be acknowledged and recorded when former are defective.

ARTICLE II.

Of the vacation of towns, lots, streets, alleys, public squares, and commons.

SECTION

7. Application to vacate, how, by, and to whom made, and the notice to be given thereof.
8. County commissioners, when and how to vacate, if no opposition.
9. Proceedings, if opposition is made.
10. Part vacated, in whom to vest.
11. Consent of adjoining owner, when to be filed.

SECTION

12. Application to the trustees, if the town is incorporated.
13. Part vacated in an incorporated town, where to vest.
14. Owners of adjoining parts of a town may vacate.
15. Owner of addition to any town may vacate.

SECT. 7. Whenever any person or body corporate, interested in any town in this state not incorporated, or which has not a corporation in active operation, may desire to vacate any lot, street, alley, common, or any part thereof, or may desire to vacate any public square or part thereof, in any such town, it shall be lawful for such person or corporation to petition the board of county commissioners for the proper county, setting forth the particular circumstances of the case, and giving a distinct description of the property to be vacated, and the names of the persons to be particularly affected thereby; which petition shall be filed with the clerk of said board thirty days previous to the sitting thereof, and notice of the pendency of said petition shall be given for the same space of time, either in a public newspaper printed in said town, or by manuscript notices thereof,

Application, how and to whom made; notice thereof.

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set up in three of the most public places in said town, containing a description of the property to be vacated.

County commissioners, when to vacate, if no opposition.

SECT. 8. If no opposition be made to such petition or application, the board of county commissioners may, in their discretion, vacate the same, with such conditions and restrictions as they may deem reasonable and for the public good.

Proceedings, if opposition be made.

SECT. 9. If opposition be made thereto, such application shall be continued until the next term of said board, at which time, if the objector shall consent to such vacation, or if the petitioner shall produce to the board the petition of two-thirds of the property holders in said town, of lawful age, the said board may proceed to hear and determine upon said application, and may, if in their opinion justice require it, grant the prayer of the petitioner in whole or in part.

Part vacated, in whom to vest.

SECT. 10. The part so vacated, if it be a lot or lots, shall vest in the rightful owner, who may have the title thereof according to law; and if the same be a street or alley, the same shall be attached to the lots or ground bordering on such street or alley, and all right and title thereto shall vest in the person or persons owning the property on each side thereof, in equal proportion, according to the length or breadth of such lots or ground, as the same may border on such street or alley.

Consent of adjoining owner to be filed.

SECT. 11. But no such vacation of a street or alley shall take place, unless the consent of the person or persons owning the property immediately adjoining to said street or alley be obtained thereto in writing; which consent shall be acknowledged before some justice of the peace and be filed with said board.

Application to be made to trustees when town is incorporated.

SECT. 12. In cases where any person interested in any incorporated town in this state, the corporate functions of which shall be in active operation, may desire to vacate any street, alley, or common, or any part thereof, it shall be lawful for such person to petition the trustees or other body, in like manner as persons interested in towns not incorporated are authorized to petition the board of county commissioners, and the same proceedings shall be had thereon before such trustees or other corporate body having jurisdiction, as are authorized to be had before the board of county commissioners; and such trustees or other corporate body may determine on such application under the same restrictions and limitations as are contained in the foregoing provisions of this article.

Part vacated in an incorporated town, where to vest.

SECT. 13. Whenever a public square or any part thereof shall be vacated, the property thereof shall vest in the board of county commissioners, for the use of the proper county; and whenever any common or any part thereof, in any incorporated town, or belonging thereto, shall be vacated, the same shall vest in the trustees or other corporate body, for the use of such town; and the proper authorities may sell the same and make a title to the purchaser thereof, and appropriate the proceeds thereof for the benefit of said corporation or county, as the case may be.

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ARTICLE 1.

Owners of adjoining parts of a town may vacate

SECT. 14. In all cases where two or more persons have laid out, or shall hereafter lay out, a town, on lands contiguous and adjoining to each other, and such town does not improve, either of the individuals holding all the legal right, title, and interest, in all the lots so laid off by such party and attached, may have the same vacated, as in case of a lot, street, or alley, on application of the party laying out such addition, or part of said town, or on the application of such person as may acquire or derive the legal title to the land and lots in such addition; and in no case shall persons purchasing lots in other additions of said town be capable of making any valid objection to such vacation, if such vacation does not obstruct any public road laid out and established by law.

Owner of any addition may vacate.

SECT. 15. If any person shall lay off an addition to any town which does not improve, and shall be the legal owner of all the lots contained in such addition, such person, or any other person who shall become the legal owner thereof, may have such addition, or any part thereof, vacated in like manner as provided in the last preceding section.

CHAPTER 25.

OF PRIVATE CORPORATIONS.

ARTICLE 1. Of the incorporation of towns.
ARTICLE 2. Of trustees to receive conveyances for lands, and donations for the use of schools, literary societies, meeting houses, churches, and masonic lodges; and some general provisions relating to burying grounds.
ARTICLE 3. Of county libraries.
ARTICLE 4. Of public libraries.
ARTICLE 5. Of agricultural societies.

ARTICLE 1.

Of the incorporation of towns.

SECTION
1. Inhabitants of town desiring to be incorporated, may petition county commissioners.
2. Petition required from two thirds of inhabitants—on proof thereof board to order an election for trustees and give notice.
3. Voters to elect a chairman and clerk for the meeting—who shall district the town — meeting to elect five trustees—their term of office.
4. Trustees to be elected annually thereafter.
5. Vacancies, how supplied.
6. Certificate of first election to be filed in the clerk's office before the trustees shall act.
7. Clerks to record same—their fee therefor.
8. Trustees to choose a president—president and trustees to be a body corporate—their powers.

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SECTION
9. Further powers and duties.
10. Power to assess and collect taxes.
11. Power to appoint officers.
12. Officers how to be governed in the assessment and collection of taxes.
13. Same subject.
14. Lots sold for taxes how redeemed.
15. Power of trustees to compel attendance, to judge of elections, and to expel officers and members.
16. Number of trustees may be increased and how.
17. Power of trustees to enforce by-laws and ordinances—penalties, how recovered.
18. By-laws and ordinances required to be published, and how.
19. Fines, taxes, &c., how to be appropriated.
20. Bounds of the corporation.
21. When and how, out-lots may be added to the corporation.
22. Corporation to have authority over commons, public grounds, wharves, &c.
SECTION
23. Corporation shall not interfere with established ferries.
24. May erect a prison—same, how regulated—when the county prison may be used.
25. Fines may be commuted for labor—persons escaping, how punished.
26. Powers given for protection against fires, &c.
27. Retailers of spirituous liquors to obtain license from town authorities.
28. Incorporated towns may adopt this article.
29. Right to change or repeal this article retained.
30. Corporations established under this article may be dissolved on petition to the county commissioners.
31. Notice of application to be given and proved.
32. Such dissolution not to affect vested rights, contracts, &c.
33. Record of the dissolution to be made.
34. Evidence of organization and publication of by-laws not to be required unless denied on oath.

Inhabitants desiring to be incorporated, may petition county commissioners.

SECTION 1. Whenever the inhabitants of any town wish to become incorporated for the better regulation of their internal police, it shall be lawful for the qualified voters who shall have resided six months therein, and pursued any trade or occupation during such time, or who shall be the owner of any freehold property in said town, to petition the board of county commissioners in the county in which such town is situate, to that effect.

On proof that two thirds of inhabitants have petitioned board shall order an election for trustees, and give notice thereof.

SECT. 2. When two thirds of all the qualified voters who shall reside within the limits of such proposed incorporation, shall have signed said petition, and the same is presented to said board and proved to have been signed by the persons whose signatures are on the same, and that they are qualified voters as aforesaid, by the oath of any reputable person, the said board shall order an election to be held at the usual place of holding elections in said town, on some day within one month from that time, for the purpose of electing trustees of such incorporation, of which said board shall cause ten days' notice to be given, by written advertisements to be put up in three of the most public places in said town.

Voters to elect a chairman, clerk and trustees—term of office.

SECT. 3. At the meeting of the qualified voters for the election of trustees, they shall first proceed to elect a chairman and clerk of said meeting, who, after being qualified, shall, without delay, lay off said corporation into five districts, and forthwith present the same to said voters, who shall proceed to elect, by a vote of the whole town, one trustee in each of

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said districts, who shall serve one year and until his successor shall be chosen and qualified.

Trustees to be elected annually, when and how.

SECT. 4. An election for trustees as aforesaid, after the first election, shall be held annually, on the first Monday in May; and at every such election, the preceding board of trustees shall direct the manner in which the same shall be conducted.

Vacancies how supplied.

SECT. 5. Vacancies made by death, resignation, or otherwise, shall be supplied by election in the manner hereinbefore directed, by the qualified electors on a day to be appointed by the remaining trustees; and the returns shall be made in such manner as shall be directed by the trustees.

Certificate of first election to be filed in the clerk's office before the trustees can act.

SECT. 6. It shall be the duty of the trustees first elected under this article, before they proceed to make any by-laws or regulations, by virtue of their election to office, to deposite in the clerk's office of their county, the certificate of the chairman and clerk of the election of the first board of trustees, together with their names; and no act or ordinance of any such first board of trustees shall be valid or of any force, unless the provisions of this article shall have been substantially complied with.

Clerks to record same. Their fee therefor.

SECT. 7. It shall be the duty of the clerks of the several counties, to make a record of such certificate when deposited in their offices by the board of trustees, agreeably to the provisions of this article, within three months after the same shall have been so deposited therein; for which services there shall be allowed the same fee, to be paid by the trustees, as is allowed to clerks for similar services in other cases.

Trustees shall elect president. President and trustees a body corporate—their powers.

SECT. 8. The board of trustees of any town, elected agreeably to the provisions of this article, shall choose a president out of their own body; and the president and trustees aforesaid so duly elected, and their successors in office, shall thenceforth be considered, in law and equity, a body corporate and politic, to have continuance forever by the name and style of "The President and Trustees of the Town of ———," and by such corporate name and style shall be capable, in law and equity, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all manner of suits, actions, plaints, pleas, causes, matters, and demands of whatsoever kind or nature they may be, in as full and effectual a manner as any person or persons, or bodies corporate and politic.

Further powers and duties.

SECT. 9. Whenever any town shall be incorporated agreeably to this article, the president and board of trustees, or a majority of them, shall have power, from time to time, and at all times, to make, ordain, establish, and execute such by-laws and ordinances not inconsistent with the laws and constitution of this state, as they shall deem necessary for the good government of such corporation; and to prevent and remove nuisances; to restrain and prohibit gambling or other disorderly conduct; to provide for licensing, regulating, or restraining theatrical and other public shows and amusements within the corporation; to regulate and establish markets, and to sink and keep

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in repair public wells; and shall have the sole and exclusive power and authority to keep in repair all necessary streets, alleys, and drains, and to pass regulations necessary for the same, agreeably to the plan of said town.

Power to assess and collect taxes.

SECT. 10. The president and board of trustees, or a majority of them, shall have full power to assess and collect annually, taxes on all real property not exceeding fifty cents on every hundred dollars of the assessed value thereof; also a poll tax on every actual citizen qualified to vote, not exceeding fifty cents each; also a reasonable tax on all other property which they may think proper subjects of taxation.

Further power to appoint officers.

SECT. 11. They shall have full power and authority to appoint an assessor, a treasurer, a clerk, and such other officers as they shall find necessary, and shall allow them a reasonable compensation for their services.

Officers how to be regulated in the assessment and collection of taxes.

SECT. 12. Such assessor, treasurer, and clerk, when appointed, shall be governed by such rules and regulations as shall be prescribed by said president and board of trustees; and the person or persons appointed to collect any tax imposed by virtue of any of the powers granted by this article, shall have authority to collect the same by distress and sale of the goods and chattels of the person charged with such tax, on giving ten days' previous notice of the time and place of such sale; and if no goods and chattels of the person charged with such tax can be found, it shall be lawful to seize and sell any lot or lots, or part or parts thereof, or so much as will pay and satisfy such taxes due and in arrear, and all costs accruing on such sale, paying to the owner or owners the overplus, if any.

Same subject.

SECT. 13. Such collector in making such collections and sales, shall have the same power, and shall be governed by the same rules and regulations as county treasurers and county auditors, and shall make conveyances and certificates to the purchasers at such sale, in like manner as the county auditor is authorized in cases of sales in the collection of the state and county revenue, and with like force and effect; but in no case shall real estate, the property of minors or femes covert, be sold for a corporation tax by virtue of this article.

Lots sold for taxes, how redeemed.

SECT. 14. Any real estate sold by virtue of this article shall be redeemable at any time within two years, by the payment of the full amount for which the same may have been sold, with fifty per centum thereon, and also the amount of all taxes or charges subsequently accrued thereon, with legal interest on the same; and if the purchaser cannot be found conveniently, the same shall be redeemed by payment made into the corporation treasury, for the benefit of the purchaser.

Further power of trustees to compel attendance, to judge of elections, and expel officers and members.

SECT. 15. A majority of the members of any board of trustees shall be a quorum to transact business, but a less number may make adjournments; and shall have power to compel the attendance of absent members, by imposing such fine on delinquents as will insure their attendance; and the board of trustees shall be the judges of the election of their own members and

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officers; and two-thirds of the members concurring may expel any officer or member for malconduct, or highly disorderly behavior. ARTICLE 1.

Number of trustees may be increased, and how.

SECT. 16. When, in the opinion of the board of trustees, it would be expedient to increase the number of trustees of such town, they may order nine to be elected at the next and every succeeding annual election.

Power to enforce by-laws and ordinances —penalties, how recovered.

SECT. 17. The president and board of trustees shall have full power and authority to enforce their by-laws and ordinances in all cases whatever; but no fine, penalty, or forfeiture, shall be inflicted on any one person for a breach of any one of the by-laws or ordinances of more than three dollars for each offence; which penalties and forfeitures may be recovered before any justice of the peace in the county, by an action of debt, in the name of such corporation.

By-laws and ordinances required to be published, and how.

SECT. 18. No by-law or ordinance shall be in force until it shall have been published in at least three of the most public places in said town for ten days, and also in some public newspaper, if any there be published in such town.

Fines, taxes, &c., how to be appropriated.

SECT. 19. All moneys arising from fines, taxes, penalties, and forfeitures, shall be appropriated by said president and board of trustees towards the erecting, improving, and regulating those objects which by this article are placed under their control and jurisdiction, as likewise for defraying all such expenses as may accrue or necessarily arise out of the exercise of powers granted to them by this article.

Bounds of corporation.

SECT. 20. The bounds of the corporation of each town shall be the in-lots, as recorded in the recorder's office of the respective counties; and when any new in-lots shall be laid off adjoining any town, and the plat thereof recorded, the same shall form a part of the said corporation, entitled to the same privileges, and subject to the same assessments, taxes, rules, and regulations as the original corporation; and for the purpose of removing nuisances, the limits of the corporation shall extend one half mile in each direction from the recorded plat of said town.

Out-lots may be added to the corporation, when and how.

SECT. 21. When two-thirds of the householders residing on any tier of out-lots adjoining any incorporated town, are desirous of being embraced within the bounds of such corporation, and they shall petition the president and trustees of such corporation to that effect, it shall be lawful for the president and trustees, upon the petition being proved by the oath of a reputable witness to have been signed by the persons whose names are affixed to the same, and that they are householders resident as aforesaid, to order and cause said petition to be recorded among the minutes of the proceedings of such corporation, from which time the said tier of out-lots shall be made a part of said corporation; and the inhabitants residing thereon and the owners thereof shall be subject to the rules and regulations of said corporation, and be entitled to all the privileges of the same.

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Corporation to have authority over commons, public ground, wharves, &c.

SECT. 22. The trustees, or other constituted authorities of any incorporated town, whether incorporated under this article or any other law of the general assembly of this state, shall have jurisdiction over any commons or public ground belonging to such town; and such trustees or other authorities of any town or city in this state situate on a navigable stream, shall have power to regulate the banks, shores, and wharves in front of said town, and the same shall be deemed a part of the corporation, and within the jurisdiction of the trustees or authorities thereof, if the owner or owners thereof shall consent thereto.

Corporation not to interfere with established ferries.

SECT. 23. This article shall not give power to any corporation to alter, vacate, or in any manner affect any ferries heretofore established by law, or which hereafter may be established.

Prison may be erected—how regulated—when county prison may be be used.

SECT. 24. The corporation of any town, whether incorporated under this or any other law, shall have power to erect a prison within the limits of such town; and it shall be lawful to imprison therein persons convicted of offences against the laws of such incorporation, or of offences against the penal laws of this state, and also persons charged with offences punishable by indictment or presentment, temporarily, until they can be conveniently removed to the county jail; and the law relating to county jails, so far as the same may be applicable, shall be the law of such town prison; and in all cases where the county jails are convenient, it may be lawful for the same to be used for town purposes until a town prison shall be erected.

Fines may be commuted for labor—persons escaping, how punished.

SECT. 25. Any person convicted of petty offences as aforesaid, and fined therefor within such corporate town, if he have no goods and chattels out of which the same can be made, may commute the same for labor on the public streets of said town, at the rate of fifty cents per day, until the fine assessed be discharged; and if any such prisoner, after undertaking to commute as aforesaid, shall escape without performing the same, he may be fined for such offence, not exceeding the amount of the original fine which he may have undertaken to pay as aforesaid.

Powers given for protection against fires.

SECT. 26. It shall be lawful for the constituted authorities of any town, incorporated under this or any other law of the state, to establish fire companies in any such town, and give such companies such power and authority, and to govern and regulate them by such by-laws and regulations as may be necessary; and they shall also have authority to raise, by taxation or otherwise, and appropriate funds, to purchase and procure fire engines, hooks, ladders, and buckets, and all other things necessary for the extinguishment of fires, and to pass and enforce all such by-laws and regulations as may be necessary to prevent the occurrence of fires in such town.

Retailers of spirituous liquors to obtain license from town authorities.

SECT. 27. It shall not be lawful for any person or persons, within the bounds of such corporation, to retail by less quantities than one quart any spirituous liquors, foreign or domestic, or to keep what is commonly called a tippling house, unless such person or persons shall, in addition to a license obtained from the

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board of county commissioners, obtain a license from the constituted authorities of said town, who are hereby authorized to grant the same, for any term not exceeding twelve months at one time, on the applicant paying into the treasury of the corporation a sum, at the discretion of the corporation authorities, of not less than twenty-five dollars; and any person or persons retailing contrary to this provision, shall be punished in like manner as for retailing without license or permit from the county; and the funds arising from such licenses, shall be a permanent fund for the support of common schools in such town, under the direction of the constituted authorities of the same.

Incorporated towns may by vote adopt this article.

SECT. 28. Nothing in this article shall be so construed as to prevent the qualified voters of any town heretofore incorporated from adopting the provisions of this article; and in case they shall do so, their former charter, so far as it may be contrary to this article, shall be void; such adoption to be made at some regular annual election, notice of the intention to take a vote on such subject having been given three weeks previous to taking the same, in like manner that the by-laws are required to be published, and two-thirds of the voters in such town voting for such adoption.

General assembly may repeal or change this article.

SECT. 29. Nothing in this article shall be so construed as to prevent any general assembly from hereafter dissolving the corporations created under and by virtue of this article, or of repealing this article, or any part thereof, or from making any amendments thereto that may be deemed expedient.

Corporations established under this article may be dissolved on petition to county commissioners.

SECT. 30. Whenever two-thirds of the inhabitants of any town, incorporated by virtue of this article, are desirous of dissolving the corporation, it shall be lawful for them to present a memorial or petition to the board of county commissioners of the proper county, signed by two-thirds of the legal voters of said corporation, including the president and a majority of the board of trustees, setting forth the object of such dissolution.

Notice to be given and proved.

SECT. 31. On proof that notice of such intended application has been given in a public newspaper, if there be one printed in the county, if not, by notice in writing set up in each district in such town, for four successive weeks previous to the sitting of said board, said notice or notices being signed by the presiding officer of said board of trustees, the board of county commissioners shall proceed to hear and determine upon the object of such dissolution, and may, if the causes assigned appear to be sufficient and proper, dissolve the corporation.

Dissolution not to affect vested rights, contracts, &c.

SECT. 32. No such dissolution shall in any wise affect any vested rights, contracts, or agreements, agreed upon or made under and by such incorporation through any individual or individuals; and such incorporation shall be liable for all debts contracted during the existence of the same; and it shall lay out and expend all moneys for and towards accomplishing the objects for which they were collected, previous to such dissolution.

Record of dissolution to be made.

SECT. 33. Whenever the said board shall dissolve any corporation under the provisions of this article, they shall cause an

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entry of the same to be made in the books containing their proceedings, together with the causes set forth for such dissolution.

Evidence of organization and publication of by-laws not to be required without denial under oath.

SECT. 34. Whenever any suit shall be instituted by any corporation herein authorized to be established, said corporation shall not be compelled to shew, on such trial, their compliance with the provisions of this article as to their organization, or as to the publication of their by-laws or ordinances, unless the same is controverted or denied by plea, verified by affidavit.

ARTICLE II.

Of trustees to receive conveyances for lands and donations for the use of schools, literary societies, meeting houses, churches, and masonic lodges, and some general provisions relating to burying grounds.

SECTION

35. Any congregation, society, &c. desiring to procure a deed for property, to elect trustees.
36. Notice of election to be given.
37. Election, where to take place.
38. Voters to appoint a clerk, who shall receive votes and file a certificate of election with recorder, who shall record the same.
39. Certificate, when conclusive and when presumptive evidence.
40. Trustees to hold office until successors are elected; of future elections of trustees, and to fill vacancies.
41. Society, &c. may establish rules for conducting election.
42. Religious societies may choose trustees according to their own usages.
43. Trustees to be a body corporate, and their powers as such.
44. Societies may change their names or the number of their trustees.
45. Trustees may receive conveyances and hold property in perpetuity for the use of their societies.
46. Trustees may acquire and hold personal property.
47. Trustees may sell and convey property.
48. Such power not to change the disposition of property donated with conditions.

SECTION

49. Wardens and vestry of protestant episcopal church to have same powers as trustees.
50. Vacancies in vestry how supplied.
51. Rector to be ex officio a vestryman.
52. Provisions extended to societies attached to colleges, and to all lyceums.
53. Manner in which property heretofore acquired may be held under the provisions of this article.
54. Same subject.
55. Provisions extended to masonic lodges.
56. Grand and subordinate lodges incorporated; name; their powers to hold and enjoy property defined.
57. Same powers extended to chapter of royal arch masons.
58. Associations, if dissolved by death, &c. how revived by others interested.
59. Powers vested in trustees, when so revived.
60. Certificate of the election of such new trustees to be recorded.
61. Provisions extended to burying grounds.
62. Same subject.
63. Burying grounds set apart and conveyed to county commissioners to be for ever kept as such.

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SECTION
64. When such ground is laid off into lots and recorded, regard thereto shall be had.
65. Private burying grounds may be in like manner establised.
66. Donor thereof to have the control of interments therein.
SECTION
67. Subsequent conveyance not to affect such ground.
68. Penalty for injuring fence, trees, &c. or improperly using burying ground.

ARTICLE 2.

Congregation, society, &c., when desiring to procure a deed for property, to elect trustees.

SECT. 35. Whenever any persons, congregation, religious society, or church, shall desire to purchase or receive by grant, devise, or donation, any town lots or lands not exceeding in quantity one hundred and sixty acres, for the purpose of erecting thereon any school house, meeting house, or church, or any building to be used and employed for educational, literary, or scientifical purposes, it shall be lawful for such persons, congregation, society, or church, to elect not less than three nor more than five trustees, who shall possess the powers, exercise the offices, and perform the duties hereinafter required.

Notice of election to be given.

SECT. 36. Notice of such election shall be given by publishing the time, place, and object thereof, at least ten days previous thereto, at the place of meeting or worship of such society, congregation, or church, or by advertisements posted up in at least three of the most public places in the vicinity, or by like notice in some public newspaper printed in the county.

Election where to take place.

SECT. 37. Such election shall take place at the usual place of meeting or of public worship of such persons, society, congregation, or church; or if there is no such place of meeting or worship, then at some place in the neighborhood in which it is proposed to erect such house or church.

Voters to appoint a clerk, who shall receive the votes and file a certificate of election with recorder, who shall record the same.

SECT. 38. Such persons, society, congregation, or church, when met, shall appoint a clerk of such election, who shall take and count the votes given for trustees; and such clerk shall, within ten days after such election, deposite in the recorder's office of the county where the real estate for which a conveyance is to be received is situate, a certificate specifying the notice given of such election, the time and place of holding the same, the names of the trustees elected, and the name of the school, literary or other society, congregation, or church of which such persons were elected trustees; and the recorder of such county shall record the same among the records of deeds in his office.

Such certificate to be evidence —when conclusive—when presumptive.

SECT. 39. As between such society, congregation, or church, the trustees thereof, and all persons claiming under them, and any person conveying, granting, or devising real estate thereto, and all persons claiming under him, such certificate shall be conclusive evidence of the matters and things therein recited; and as between such society, congregation, or church, the trustees thereof, and all persons claiming under them, and all other persons, it shall be presumptive evidence of such matters.

Trustees to hold office un-

SECT. 40. Such trustees shall severally hold their offices until their successors shall be duly elected according to the

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til successors are elected.—Future elections for trustees and to fill vacancies.

rules of such society, congregation, or church; and when any such society, congregation, or church, shall be desirous of changing their trustees, or any of them, or to fill any vacancies therein, they may do so at any annual, stated, or called meeting, of which notice shall have been given in any of the modes prescribed in the case of a first election.

Society, &c., may establish rules for conducting elections.

SECT. 41. Such society, congregation, or church, or the trustees thereof, by the direction of a majority of the members of the society, church, or congregation, at any annual, stated, or called meeting thereof, may adopt any rules and regulations for the mode of conducting business, holding elections to choose trustees, and of filling vacancies, either by election or by a majority of the trustees, as may be deemed expedient or proper, not inconsistent with the laws and constitution of this state; but a majority of such congregation at any regular or called meeting thereof, may alter, modify, or abrogate, any of such rules or regulations at their pleasure.

Religious society may choose trustees according to their own usages.

SECT. 42. Any religious society, with the consent of a majority of its members, may select or appoint trustees according to the common usage or custom of such society; and the names of the trustees so selected or appointed, shall be certified to the recorder in the same manner and with the like effect as if they had been chosen at an election.

Trustees to be a body corporate — their powers as such.

SECT. 43. Such trustees and their successors in office, for the objects and purposes embraced in this article, shall be a body corporate and politic, by the name and style of "The Trustees of ———," and in such name may contract and be contracted with, sue and be sued, plead and be impleaded, and do all other acts and things proper and right, in accordance with the objects and purposes of this article.

Societies may change their names or the number of their trustees.

SECT. 44. Such trustees and their successors in office may, at any time, alter or change their corporate name or style; or such congregation, society, or church, may alter or change their peculiar name or designation, as also the number of their trustees so that the number be not made more nor less than the number specified in this article, without affecting their corporate rights or property; but such change or alteration as allowed in this section, shall not affect the rights of other persons, or diminish any liabilities which such trustees or their society, congregation, or church may have incurred.

Trustees may receive conveyances and hold property in perpetuity for the use of their societies.

SECT. 45. Such trustees, elected as herein provided, or appointed in pursuance of any rules or regulations of the trustees or the society, congregation, or church, at any time after their election or appointment is recorded, as before provided, shall have full power and authority, as such trustees, to receive conveyances of lands, tenements, and hereditaments, whether the same be by purchase, donation, or otherwise; and to hold the same to them and to their successors as such trustees, in perpetuity to and for the only sole and exclusive benefit and behoof of such society, congregation, or church, for the uses and purposes contemplated by the provisions of this article.

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SECT. 46. Such trustees and their successors in office, may also acquire and possess, for the uses and purposes aforesaid, personal property not exceeding in value the sum of five thousand dollars; and may appropriate the same, and the income or interest thereof, and all other funds and incomes which they may have or possess, to the purposes of education; to the maintenance of religious worship, grave yards, schools, and libraries; and to the erection of buildings and providing all the requisite conveniences for the same.

Trustees may acquire and hold personal property.

SECT. 47. Such trustees, in furtherance of the objects and on behalf of such society, congregation, or church, may sell, lease, or otherwise dispose of their corporate property; and any sale and conveyance thereof by such trustees or a majority of them, on behalf of their society, church, or congregation, for any such object, shall vest in the purchaser thereof all the right, title, and interest of such society, congregation, church, or corporation, of, in, and to the same.

Trustees may sell and convey property.

SECT. 48. The provisions of the last preceding section shall not be construed to affect any gift, donation, devise, or bequest, to any such society, congregation, or church, or to the trustees thereof for the use and benefit of such society, congregation, or church, so as to allow the same to be held, used, enjoyed, disposed of, or conveyed, contrary to the intentions of the grantor, donor, or testator.

Such power not to affect property donated with conditions.

SECT. 49. The church wardens and vestrymen of any congregation of the Protestant Episcopal Church in this state, who may be chosen in the manner prescribed for the election of trustees by this article, or in accordance with the rules and usages of such Protestant Episcopal Church, shall be capable, after a record of their election shall have been made as herein provided in the case of trustees, by their title of "wardens and vestrymen of ——— church, ———," of contracting and being contracted with, and suing and being sued in any court of this state, and shall be vested with all the powers and authority conferred on trustees by the provisions of this article, for the purposes herein named.

Wardens and vestry of Protestant Episcopal church to have same powers as trustees.

SECT. 50. When a vacancy shall happen in consequence of the death, resignation, or removal from office, of any church warden or vestryman, elected in accordance with the provisions of this article, the remaining members of the vestry in which such vacancy may occur, shall be authorized to appoint another person to fill such vacancy until the next regular election.

Vacancies in vestry, how supplied.

SECT. 51. The rector of every Episcopal Church in this state shall have a right to a seat in the vestry of such church, and shall be ex officio a member thereof, according to the rules, regulations, and form of government of the church.

Rector to be ex officio a vestryman.

SECT. 52. The provisions of this article shall extend to all literary societies attached to the several universities, colleges, and academies in this state, and also to all lyceums whatsoever.

Provisions extended to societies attached to colleges, and to all lyceums.

SECT. 53. Any religious society, the inhabitants of any neighborhood, or any congregation whatever, who, previous to

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Property heretofore acquired may be held under the provisions of this article, and how.

the passage of this article, may have received any lot or tract of land not exceeding five acres, by donation or purchase, for the purpose of erecting on the same a house of religious worship, a school house, or other building appropriated to such congregation, society, or neighborhood, and may be desirous of holding the same in perpetuity, by trustees, as prescribed in this article, are hereby authorized and empowered so to do, having first obtained the consent thereto of at least two-thirds of the persons interested in such lot or tract of land, and elected trustees, and caused the certificate of their election to be recorded in the recorder's office of the proper county, agreeably to the provisions of this article; upon which the fee simple of such lot or tract of land shall be vested in the said trustees, and their successors in office, for the use and benefit of their said society, neighborhood, or congregation, as the case may be, as fully in every respect as if the same had been made to them in trust in the first instance.

Same subject.

SECT. 54. The trustees of such religious society, neighborhood, or congregation, shall have the same rights and privileges in and over such lot or tract of land by them so held, and be subject to the provisions of this article relative to trustees, in the same manner as in other cases.

Provisions extended to masonic lodges.

SECT. 55. The rights, privileges, benefits, and immunities, hereby granted and extended to congregations and religious societies, are hereby granted and extended to the grand lodge of Indiana, and to the several lodges which now are or hereafter may be subordinate to such grand lodge.

Corporate name of grand and subordinate lodges—power to hold and enjoy property defined.

SECT. 56. The said grand lodge of Indiana, by the name and style of the grand master, deputy grand master, and wardens of the grand lodge of Indiana, and the lodges which now are and may hereafter be subordinate to the said grand lodge, by the name and style of the master and wardens of lodge number —, taking to themselves such name and number as have been or may be assigned to them by the grand lodge of Indiana, shall be able and capable in law to purchase, have, hold, receive, enjoy, and retain to themselves in perpetuity, or for any term of years, any lands, tenements, or hereditaments, of what kind or nature soever, not exceeding in real estate one acre of ground, together with the improvements thereon; and of personal estate not exceeding the sum of five thousand dollars; and to sell, alien, or release the same, as they or each of them may think proper.

Same powers extended to chapters of royal arch masons.

SECT. 57. The same powers, rights, privileges, and immunities which are by this act conferred on and extended to the said subordinate lodges, are hereby extended to and conferred on each and every chapter of royal arch masons now established in this state, or which may hereafter be established according to the principles of royal arch masonry.

Associations, if dissolved by death, &c. how revived by others interested.

SECT. 58. When any congregation, religious society, masonic lodge, or the inhabitants of any school district, or neighborhood, shall have elected trustees, in conformity to the provisions

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of this article, and such association shall have been dissolved by the death, resignation, or removal of its members, a majority of persons interested may, within five years after such dissolution, proceed to elect a new board of trustees, in conformity to the provisions herein contained.

Powers vested in trustees when so revived.

SECT. 59. The new board of trustees elected as aforesaid, shall be vested with the same powers, and may do and perform all acts and things which by the provisions of this article trustees could legally do and perform.

Certificate of the election of such new trustees to be recorded as in other cases.

SECT. 60. It shall be the duty of the trustees who may be elected or appointed as last provided for, within ten days after their election or appointment, to produce to the recorder of the proper county, a certificate of their election or appointment, as the case may be; and such recorder shall immediately record the same as in other cases, as provided in this article.

Provisions extended to burying grounds.

SECT. 61. All the provisions of this article are hereby extended, so far as the same may be applicable, to any individuals who may think proper to unite themselves together for the purpose of receiving donations of land, or purchasing the same for burying grounds.

Same subject.

SECT. 62. When such donations or purchases shall be made to or by any such individuals, and a certificate thereof, or conveyance therefor, together with the articles of association by which such individuals have become united for such purpose, shall be filed in the office of the recorder of the proper county, and by him recorded, such individuals shall enjoy all the privileges necessary for the preservation and protection of such burying ground, in the same manner as if such individuals were regularly incorporated by law, and such burying ground shall forever remain as such.

Burying ground set apart and conveyed to county commissioners, to be forever kept as such.

SECT. 63. In all cases where any person or persons shall hereafter set apart any portion of ground for a public burying ground, and shall make a deed in fee simple to the board of county commissioners of the county where such burying ground shall be situated, and to their successors in office forever, and shall have such deed recorded in the recorder's office of said county, the same shall be taken and deemed to be dedicated as a public burying place forever; and the board of county commissioners shall forever hold the same in trust, and for the use above prescribed, and shall never sell or convey the same for any other purpose whatever.

When such ground is laid off into lots and recorded, regard thereto shall be had.

SECT. 64. In all cases where the donors of such ground shall lay the same off into lots, plainly designated by corner stones or posts, and record a plat thereof in the recorder's office, then and in that case, persons interring in said burying place shall bury within the lots so designated, leaving the shares as indicated by such corner stones or posts and record.

Private burying ground may be in like manner established.

SECT. 65. If any person shall wish to establish a private burying ground, he may do so, and such ground as he may set apart for that use, and convey to the board of county commis-

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sioners in like manner as above provided, shall remain a private burying place forever.

Donor of such private ground shall have the control of interments therein.

SECT. 66. The donor of such private burying ground, his heirs and assigns forever, shall have the exclusive right and privilege of admitting corpses into such private burying ground for interment, and shall direct as to the place where the same shall be buried; and may grant any privilege and right of burial in such ground as shall not interfere with any of the graves, rights, or privileges of other persons, who have rightfully buried their dead in such burying ground.

Subsequent conveyance, &c. not to affect such ground.

SECT. 67. No burying ground specified in this article shall pass or be held contrary to the intent and meaning of this section, by virtue of any subsequent devise, purchase, descent, or conveyance of the donor.

Penalty for injuring fence, trees, &c., or improperly using burying ground.

SECT. 68. If any person shall wilfully disfigure or injure any tombstone, fence, or shade or ornamental tree or shrubbery around or within any public or private burying place, or shall use any such burying place for any other purpose than a grave yard, such person shall, upon conviction thereof in any court of competent jurisdiction, be fined in any sum not exceeding one thousand dollars, to which may be added imprisonment in the county jail, or the state prison, not to exceed one year, at the discretion of the jury trying the same.

ARTICLE III.

Of county libraries.

SECTION

69. Trustees for county libraries, how elected.
70. Trustees to hold their office until superseded by qualified successors.
71. Of the certificate of election and oath of office to be endorsed thereon.
72. Trustees to choose a president, who, with trustees, to be a body corporate; vacancies, how supplied.
73. Sheriff shall advertise election.
74. Trustees shall elect librarian, treasurer, and other officers; establish by-laws; treasurer's bond.
75. County library fund to be paid to treasurer; for failure he may prosecute, and how.

SECTION

76. President pro tem.; quorum, how many.
77. Money, how expended; amount of property to be held, limited.
78. County library fund, how constituted.
79. Such fund to be paid in par money.
80. If received in county orders, agent, how to collect par funds to like amount; and not to be sued until such collection.
81. Library funds heretofore paid into county treasury to be refunded.
82. Library not subject to county debts.

Trustees, how elected.

SECT. 69. Whenever the citizens of any county shall be desirous of incorporating a county library, it shall be lawful for the qualified voters of such county, twenty days' previous notice having been given, by putting up at least one manuscript adver-

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tisement in each township of such county, one of which shall be at the place where courts are usually holden, to assemble themselves at the court house, or place where courts are usually holden, and when so assembled, and having chosen a chairman and secretary, to proceed to the election of seven trustees of the county library of such county, to serve for the term of one year, from and after the first Monday of September next ensuing their election, and until their successors shall be elected and qualified; and all elections for trustees shall be annual on the first Monday of September, as their terms of office may respectively expire.

Trustees to hold their office until superseded by qualified successors.

SECT. 70. When trustees of the county library of any county, or their successors in office, have been or shall hereafter be elected, pursuant to any law of this state in force at the time, and their successors in office shall not have been or shall not hereafter be elected and qualified, as required by law, such trustees or successors first named shall hold their said offices and act as trustees of such county library until their successors are duly elected and qualified.

Certificate of election to be given to trustee —his oath of office to be endorsed thereon.

SECT. 71. The trustees elected in manner aforesaid, and their successors in office, shall each receive from the chairman of said election, a certificate, attested by the secretary of said election, certifying that they were duly elected; and shall, before entering upon the duties of their office, each take an oath or affirmation, before some person authorized to administer the same, for the faithful performance of the duties of their office; and it shall be the duty of the person administering such oath to endorse a copy thereof on the back of said certificate.

Trustees to choose a president—to be a body corporate.

SECT. 72. The trustees chosen in manner aforesaid shall appoint one of their number to be president; and the president and trustees appointed as aforesaid are hereby created and declared a corporation and body politic, with perpetual succession, by the name and style of "the president and trustees of the —— county library," and shall, in their corporate capacity, be able and capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court of justice, and to make and use a common seal, and the same to change and alter at pleasure; and when vacancies shall happen by the death, resignation, or removal from office, of the president, or any of the trustees as aforesaid, the board of county commissioners shall appoint another person or persons to fill such vacancy or vacancies until the election of trustees thence next ensuing, and until their successors shall be elected and qualified.

Vacancies how supplied.

Sheriff shall advertise election.

SECT. 73. It shall be the duty of the sheriff of each county, at least three weeks before the term of service of the president and trustees of such library shall expire, to give notice that there will be an election held for the purpose of electing seven trustees for such county library; which election shall be held and conducted in all respects agreeably to the provisions of this article.

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Trustees shall elect librarian, treasurer, and other officers, establish by-laws—treasurer shall give bond.

SECT. 74. The president and trustees, qualified in manner aforesaid, shall elect by ballot a librarian and treasurer, and such other subordinate officers as they may think necessary, and may remove any such officer at their pleasure; and shall have power from time to time to make such by-laws, ordinances, and regulations, in writing, not inconsistent with the constitution and laws of this state, and of the United States, as may be necessary for the government of the institution; the treasurer shall give bond, with such security as the president and trustees shall direct.

County library fund shall be paid over to treasurer—for failure he may prosecute, and how.

SECT. 75. The agent of any county in which there may be a corporation as aforesaid, shall, on the presentment of an order signed by the president and attested by the clerk thereof, forthwith pay to the treasurer of such corporation, all moneys in his hands due said library; and on failure so to do, such treasurer shall proceed against such delinquent agent, by motion in the circuit court, having given ten days' previous notice thereof; and the court shall give judgment against such agent and his sureties, for such sum as may be found due to such county library, together with interest and costs; and execution without stay thereon shall be awarded.

President pro tem.—what number of trustees a quorum.

SECT. 76. In case of the absence of the president at any meeting of the trustees, the trustees shall have power to elect one of their own body to serve as president pro tempore, until the president shall attend; but not less than a majority of the trustees elected or appointed as aforesaid, shall form a quorum to transact business.

Moneys, how expended—amount of property limited.

SECT. 77. The president and trustees of the county libraries are hereby authorized to demand and receive, upon their order, all moneys that may be paid into the treasury of their corporation, for the benefit of a county library for such county, and lay out the same in the purchase of books, maps, and such other property, real and personal, as they may think conducive to the advancement and benefit of such corporation; but any such corporation shall not, in its corporate capacity, at any time, hold more than the value of two thousand dollars in real and personal property, books excepted.

Library fund, how constituted.

SECT. 78. Ten per centum of the nett proceeds received from the sale of all in-lots and out-lots, sold by order of the board of county commissioners, as the property of any county, in or adjacent to any town being a county seat in this state, and ten per cent. on all donations made to procure the location of any county seat, shall be reserved for the use of a public library for such county, to be collected and paid over as provided for in this article.

Such ten per cent. to be paid in specie, notwithstanding any order of commissioners.

SECT. 79. For the purpose of more effectually securing the ten per centum arising from the sales of town lots at each county seat established by the laws of this state, the county agent of each county shall not be subject to obey any order made by the board of county commissioners, which would authorize such agent to receive any thing but specie or its equiva-

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lent for the ten per centum reserved by law on the amount of the sales of lots at the county seat for the use of a county library.

When such ten per cent. shall have been received in county orders, agent, how to collect specie to like amount.

SECT. 80. In all cases where any county agent may have heretofore, in obedience to the order of the board of county commissioners of his proper county, taken and received county orders in payment of debts due for town lots, in or adjacent to any county seat established as aforesaid, such agent shall apportion the amount of ten per centum due such county library, (and received in county orders as aforesaid,) on all the debts still due such county for town lots according to the sums which each individual may be owing, and shall collect such amount in good funds; and until such agent shall have had a reasonable time to collect such sum due, no action shall lie against him by the president and trustees of the county library for failing to pay such part of the library fund.

Agent not to be sued until such collection.

Library money heretofore paid into county treasury to be refunded.

SECT. 81. If, in the sale of any such town lots in any county in this state, a reservation of ten per centum on the amount of sales has been made for the use of a county library, and the agent of such county shall have paid over the whole amount, or all that he has received of the purchase money of any lots, into the county treasury of his county, without reserving and deducting the said ten per centum, such county shall be liable to the president and trustees of the county library for the amount of such ten per centum; and it shall be the duty of the board of county commissioners, on satisfactory proof of the above state of facts, by an order entered on their records, to direct the auditor of their county to audit, and their treasurer to pay, the full amount of the ten per centum so received, to such president and trustees, out of any moneys belonging to said county not otherwise appropriated.

Library not subject to payment of county debts.

SECT. 82. No county library, the books of which have been purchased by the funds in this article reserved and set apart for that purpose, shall be liable for any debts of the county, or be subject to seizure by execution or otherwise in any case whatever.

ARTICLE IV.

Of public libraries.

SECTION

83. Persons subscribing to amount of fifty dollars may organize a library.
84. How to organize by proceeding to election of
85. Five trustees, who shall choose a president; president shall have casting vote.
86. Statement of such proceedings, how to be certified and where filed;
87. And to be recorded.
88. The president and directors to be a body corporate.
89. Restricted as to banking powers.

SECTION

90. Future elections, where to be held; if none held, officers to hold over.
91. Power to establish by-laws.
92. To adopt a common seal; assess a tax; appoint a treasurer.
93. Majority to form a quorum; vacancies, how supplied.
94. May receive donations; same how applied.
95. Amount of property restricted.
96. County libraries not to be governed by this article.

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PART 1.

Subscribers to amount of fifty dollars may organize a library.

SECT. 83. The inhabitants of any city, town, village, or neighborhood, in this state, or any part of them, whenever they have subscribed the sum of fifty dollars or upwards towards the establishment of a public library, may assemble themselves for the purpose of holding an election for directors.

How to organize.

SECT. 84. If two-thirds of the subscribers are present, they may proceed to choose, by voice, a chairman, who shall preside at that meeting, and a clerk, who shall keep a record of the same.

Same subject.

SECT. 85. After a chairman and clerk are chosen, the shareholders may proceed to choose, by ballot, seven directors, and to agree upon a name by which their library shall be known; the directors shall appoint one of their number to be president at their meetings, who shall have no other than a casting vote.

Statement of proceedings, how to be certified and where filed.

SECT. 86. A true statement of the proceedings of such meeting, including the amount subscribed and the number of subscribers present at their meeting, shall be sworn or affirmed to before some justice of the peace of the county, by the chairman or the clerk provided for by the eighty-fourth section of this chapter, and filed in the recorder's office; and it shall be the duty of such justice to certify on such statement that it was sworn or affirmed to before him.

Same to be recorded.

SECT. 87. The recorder of the county shall record the said statement on his book of record when required.

President and directors to be a body corporate.

SECT. 88. After such statement shall be duly recorded, the president and directors, and their successors for ever, shall be a body corporate and politic, to be known by such name as is registered in the recorder's office; they shall be capable in law and equity to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court or courts, or before any judge or judges, justice or justices, person or persons whatsoever, in all manner of suits, actions, plaints, pleas, causes, and demands whatever, in as effectual a manner as any other person or persons, body or bodies corporate or politic, may or can do.

Restricted as to banking powers.

SECT. 89. Nothing contained in this article shall be so construed as to authorize any library company incorporated in this state, to issue notes or bills of credit payable to any person or persons on his or their order, or to bearer; nor to deal in any kind of bills of exchange, notes or duebills whatever.

Future elections, where to be held; if none held, officers to hold over.

SECT. 90. Except the first election of directors, the annual election for ever thereafter shall be held on the first Monday in January; but if any annual election should be omitted, the directors shall remain in power until the next annual election, and until successors shall be chosen.

Power to establish by-laws.

SECT. 91. Such library or libraries shall be governed and regulated by such by-laws as may, from time to time, be made by the president and directors of the same, not inconsistent with the constitution and laws of this state, who shall have power to alter, amend, abolish, and renew, any such by-law or by-laws at pleasure.

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Further powers of president and directors to adopt a common seal; assess a tax and appoint a treasurer, &c.

SECT. 92. The president and directors shall have power to make a common seal, and the same to alter, break, change, or renew at pleasure; they shall have power to levy a tax on the shareholders, provided such tax do not exceed one dollar on each share in any one year; nothing, however, in this article shall be so construed as to prevent a majority of two-thirds of the shareholders, attending at their annual meeting, from increasing such tax to any sum not exceeding five dollars on each share in any one year; they shall have power to appoint a treasurer and librarian, and the same to remove at pleasure.

Quorum; vacancies, how supplied.

SECT. 93. A majority of the directors shall be necessary to form a quorum; they shall have power to fill vacancies that may happen in their own body; and the director or directors by them elected shall serve until the next annual election thereafter, and until others are elected in their stead.

Power to receive donations, and how to apply the same.

SECT. 94. They shall have power to receive, by donation, any books, moneys, papers, lands, or any other thing or things, and such donation, or the income or the interest thereof, shall be applied to no other purpose than the true interest and objects of the library on which it was bestowed, according to the true intent and meaning of this article.

Amount of property to be kept, restricted.

SECT. 95. They shall not keep for a longer time than six months after receiving the same, more than the real value of five hundred dollars, in land or any other property, except books and those things appertaining to a library.

Cou'ty libraries not to be governed by this article.

SECT. 96. This article shall not be construed to affect any county library provided for in the constitution of this state.

ARTICLE V.

Of agricultural societies.

SECTION

97. How organized.
98. Notice to be given.
99. Chairman and secretary to be chosen, their oath and duties.
100. Officers of the society.
101. Treasurer to give bond, same where recorded and filed.
102. Amount of annual tax, how determined.
103. Officers elected to be a body corporate—name and powers.
104. May make by-laws, establish prizes, time of exhibition and elections, fill vacancies, admit members—ten days' notice of election to be given.
105. May adopt a seal.

SECTION

106. May hold real estate, amount restricted.
107. Duties of president—president pro tem.
108. Power to appropriate money restricted.
109. Members may withdraw at any time, paying dues.
110. State board of agriculture, how appointed, and term of office.
111. To be a body corporate—vacancies, how supplied.
112. How organized.
113. Powers and duties defined.
114. Annual meeting to be held at Indianapolis second Monday in December.

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PART 1.

How organized

SECT. 97. When any twenty or more citizens of any county shall see proper to meet at their county seat, in conformity with the provisions of this article, it shall be lawful for them to organize themselves and become an agricultural society, with corporate and politic powers.

Notice to be given.

SECT. 98. Public notice of the intended meeting shall be given by advertisements, signed by at least three freeholders of the county, and put up at three public places therein, three weeks previous to said meeting, or published three weeks in a newspaper printed in the county, setting forth that the object thereof is the formation of an agricultural society, under the provisions of this article.

Chairman and secretary to be chosen, their oath and duties

SECT. 99. When twenty or more citizens of any county shall have so met at the county seat, it shall be lawful for them to choose by voice a chairman and secretary for said meeting, who shall be sworn or affirmed faithfully to discharge their respective duties as chairman and secretary of such meeting, and then to proceed to take a vote whether they will incorporate themselves under the provisions of this article; and if there be twenty present who so agree, they shall forthwith hold elections by ballot for officers, at which elections the chairman and secretary shall officiate as judges.

Officers of the society.

SECT. 100. The officers of each society shall be a president, and vice president, treasurer, secretary, and seven directors, and such subordinate officers as the president and directors shall from time to time appoint, for the purpose of determining between competitors for prizes and awarding the same.

Treasurer to give bond, same where to be recorded and filed.

SECT. 101. The treasurer shall give bond, in such sum and with such surety as the president and directors may approve, conditioned for the payment of all moneys entrusted to him, to such person or persons as may by law be entitled to the same, and for the faithful discharge of his duty as treasurer; which bond shall be recorded in the recorder's office of the county, and filed in the office of the clerk of the circuit court of the county.

Amount of annual tax, how determined.

SECT. 102. Before any election is held for officers at the first meeting, it shall be determined by voice, what shall be the tax for the first year on each member; and at every annual meeting the amount of the succeeding yearly tax shall be determined by voice, which shall never exceed five dollars, or be less than one dollar, in any year on each member.

The officers elected to be a body corporate —name and powers.

SECT. 103. So soon as a certificate, signed by the chairman and secretary, stating that a meeting and election of a president, vice president, secretary, treasurer, and seven directors have been had in conformity with this article, is recorded in the recorder's office, (whose duty it shall be to record the same for a fee of twelve and a half cents,) the persons so elected and their successors in office shall be, in law and in fact, a body corporate and politic, to have continuance forever, by the name and style of "The Agricultural Society of ——— County;" and by such corporate name and style, shall be forever able and

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capable, in law and equity, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all manner of suits, actions, plaints, pleas, causes, matters, and demands, of whatever kind and nature they may be, in as full and effectual a manner as any person or persons, or body or bodies corporate and politic.

Power to make by-laws, establish prizes, time of exhibitions and of elections, fill vacancies, and admit members.

SECT. 104. Said president and directors shall have power to make and alter by-laws, (a majority being necessary to form a quorum); to determine on what articles, animals, mode of husbandry, or other improvements of any kind connected with agriculture or domestic mechanism, they will confer prizes, and the amount thereof; to fix the days of exhibition; to fill vacancies in their own body, or in any office pertaining to the society, between the times of holding annual elections; to provide for the admission of other members; to direct, by a by-law, the mode of holding future elections, of the time and place of which election there shall be at least ten days' notice given, by advertisements in three public places in the county; but no by-law shall be contrary to the laws of this state.

Notice of elections.

May adopt a seal.

SECT. 105. Said president and directors may adopt a common seal, with which they shall seal all their official acts; which seal they may alter or revoke at their pleasure and institute another instead thereof.

May hold real estate.—Amount restricted.

SECT. 106. Such corporation may receive and dispose of donations of land or other property for the use of said society; but no corporation shall hold any greater amount of real estate than the value of five hundred dollars, for any greater length of time than six months.

Duties of president.

SECT. 107. The president, or, in his absence, the vice president, shall preside at the meetings of the directors and have a casting vote on all questions; and in case of the absence of both of those officers, the directors, at any meeting, may choose a president pro tem. from their own body.

President pro tem.

Power to appropriate money restricted.

SECT. 108. No money shall be appropriated for any other purpose than the payment of prizes that relate to agriculture and domestic manufactures, and for publications on the same subjects; and the necessary contingent expenses of the society.

Any member may withdraw.

SECT. 109. Nothing in this article shall be so construed as to prevent any member of any agricultural society from withdrawing therefrom, on his giving notice thereof to the treasurer and paying up all dues.

State board of agriculture, how appointed and term of office.

SECT. 110. There shall be formed a state board of agriculture, consisting of five persons to be appointed by the governor, who shall hold their offices for five years, and until their successors shall be duly appointed.

To be a body corporate.—Vacancies, how filled.

SECT. 111. The board, when organized, may have power to fill any vacancies that may occur in their body, by appointment, which shall terminate with the expiration of the term of members regularly appointed; and possess all the corporate and politic powers granted to agricultural societies by this article,

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by and under the style of "The Indiana State Board of Agriculture."

How organized.

SECT. 112. It shall be the duty of the persons appointed as members of the state board, to organize immediately by appointing one of their own body president, and by appointing a secretary and treasurer.

Powers and duties.

SECT. 113. They shall collect from agricultural societies and from all other sources accessible to them, such information as shall be calculated to promote the agricultural interests of the state; give such directions or instructions to agricultural societies as may tend to produce system, uniformity, and efficiency of action on the part of said societies; prepare, procure, publish, and circulate, such agricultural tracts or other works, and conduct such agricultural experiments, as may be ordered by the legislature or by agricultural societies, in state meeting represented; they shall also receive and record or file, all papers of agricultural societies committed to their care; make all necessary arrangements for the annual meetings of the state society; make an annual report to the legislature, embracing a statement of their own proceedings, an abstract of the reports from the several agricultural societies, and such other information and recommendations as, in their judgment, would be interesting and useful to the agricultural community; and shall perform such other duties as shall be prescribed by the legislature or by the state society at any annual meeting.

Annual meetings to be held at Indianapolis.

SECT. 114. There shall be held annually, in Indianapolis, on the second Monday in December, a meeting of the state board and of delegates from the agricultural societies, which shall be known as the annual meeting of the state agricultural society of Indiana; the object of which shall be to devise plans of operation and means of diffusing agricultural intelligence, and generally to give the cause the best and most efficient impulse which may be afforded by combined action and influence.

CHAPTER 26.

OF GRIST MILLS AND MILLERS.

SECTION
1. Rate of tolls allowed for water mills.
2. Liability of millers for property deposited.
3. Penalty for failing to grind in due time and in turn.
4. Millers shall load and unload grain; penalty for refusal.
5. Not bound to grind for distillation.

SECTION
6. Millers to be exempt from militia duty and serving on juries.
7. Prices for grinding at mills not moved by water to be posted up; penalty for neglect.
8. Penalty for overcharge at any such mill.
9. How rates may be changed at such mill.

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ARTICLE 1.

Rates of toll for water mill.

SECTION 1. The owner or occupier of every water grist mill shall be entitled to have and receive, out of the grain which shall be ground in such mill, the following rates of toll in full compensation therefor, to-wit: for grinding and bolting wheat or rye into flour, one-eighth part thereof; for grinding Indian corn, oats, barley, or buckwheat, one-eighth part thereof; for grinding malt and chopping rye, one-eighth part thereof.

Liability of owner or occupier for property deposited.

SECT. 2. The owner or occupier of every grist mill shall be accountable to the owners of grain received to grind, for the safe-keeping of the same whilst in such mill; and if any grain, bag, or cask, containing the same, shall be lost or destroyed whilst entrusted to the care of any miller for the purpose of being ground, the owner or occupier of the mill, as the case may be, shall make good the same to the owner thereof; but in order to entitle any owner of property so deposited, and lost or destroyed, to recover the value thereof against such owner or occupier, he shall cause the bag or cask to be distinctly and durably marked with the initial letter of his christian and the whole of his surname, in plain letters; but nothing in this section contained shall be so construed as to charge any owner or occupier of any mill with any such loss that shall happen by fire or other unavoidable accident, without the fault or neglect of such miller, owner, or occupier thereof.

Penalty for failing to grind in due time and in turn.

SECT. 3. It shall be the duty of all millers who grind for toll to well and sufficiently grind the grain brought to their mills, in due time, and in turn as it is brought, except as hereinafter provided; and every miller failing to grind as aforesaid, as the same shall come in turn, or who shall take or exact more than legal toll, shall, for every such offence, forfeit and pay to the person injured the sum of two dollars and fifty cents, recoverable by action of debt before any justice of the peace of the township where the offence shall have been committed, if the same be sued for within twenty days.

Millers shall load and unload grain; penalty for refusal.

SECT. 4. It shall be the duty of the owner or occupier of any grist mill as aforesaid to receive and carry in and out of such mill, load and unload, all grain brought to their respective mills, when demanded by the owner or carrier of such grain, except as hereinafter provided; and on failure thereof he shall be fined three dollars, on the complaint of the owner of the grain, before any justice of the peace of the proper township.

Not bound to grind for distillation.

SECT. 5. No owner, lessee, or occupier of any grist mill shall be compelled to receive or grind corn or grain of any kind, intended to be used or sold by the person taking or sending the same to such mill for the purpose of distillation; nor shall it be incumbent on such owner, lessee, or occupier, to grind in turn any corn or grain intended to be so used or sold for distillation.

Millers exempt from militia duty and serving on juries.

SECT. 6. The owner or occupier of any such grist mill in actual operation shall be exempt from performing militia duty in time of peace, and from serving on juries; but this exemption

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shall not extend to more than two persons at any one grist mill, such person or persons being the owners or occupiers thereof.

Prices for grinding at mills not moved by water power to be posted up; penalty for neglect.

SECT. 7. It shall be the duty of every person who may be the owner or occupier of any mill propelled by steam, horse, or other power, and not by water, to post up in some conspicuous part of his mill house or mill establishment, the rates of toll he may charge for grinding the different kinds of grain ground at his said mill; and for every day such person shall neglect to keep such rates so posted up, he shall forfeit and pay a fine not exceeding three dollars, for the use of the seminary of the proper county.

Penalty for overcharge at any such mill.

SECT. 8. If the owner or occupier of any such steam or other mill shall at any time demand and receive a higher toll than what is contained in the list of rates posted up as aforesaid, he shall forfeit any sum not exceeding three dollars for every such offence, recoverable in an action of debt by the party injured.

Rates, how changed at such mill.

SECT. 9. Such person shall have a right to change such rate of toll by posting up such changed rates two months previous to demanding and receiving the same.

CHAPTER 27.

OF THE INSPECTION OF SALT, BEEF, FLOUR, PORK, AND TOBACCO.

SECTION
1. Inspectors of salt, how appointed, their duty, and fees.
2. Penalty for vending salt without inspection.
3. Inspector of flour, beef, and pork, how appointed.
4. Duties and fees of such inspectors—penalty for extortion.
5. Weight of each barrel of flour, and how to be branded.
6. Weight of each barrel of beef and pork, and how to be branded—when flour, beef, and pork shall be condemned.
7. Inspector of tobacco, how appointed, his duties and fees.
8. Penalty for altering brands.
9. Oath of office.

Inspectors of salt, how appointed, their duty and fees.

SECTION 1. The board of county commissioners, in any county in this state, when they think proper so to do, may appoint an inspector, who shall hold his office during the pleasure of said board, whose duty it shall be to inspect all salt in barrels that may be offered for sale in such county, and weigh the same if required; and shall brand the same on one end of the barrel, first, second, or third rate, agreeably to the quality of the salt such barrel may contain, and if he shall weigh the same, shall mark the weight thereon; for which inspection, the owner or owners of such salt shall pay to the inspector two cents for each barrel by him inspected.

Penalty for vending salt

SECT. 2. If any person or persons, in any county where such inspector may have been appointed, shall offer for sale and

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vend any salt by the barrel, without being inspected and branded, as is provided by the first section of this chapter, he, she, or they, so offending shall, for every such offence, be fined in any sum not less than three nor more than twenty dollars, before any court having competent jurisdiction, by presentment or indictment, for the use of the county seminary.

without inspection.

SECT. 3. It shall be lawful for the board of county commissioners in any county in this state, when they may think proper so to do, to appoint some suitable person as inspector of flour, beef, or pork, in barrels, who shall hold his office for three years, and until a successor be appointed and qualified.

Inspector of flour, beef, and pork, how appointed.

SECT. 4. Each such inspector of any county in this state shall, on the application of such owner, owners, or agents, of flour, beef, or pork, intended for exportation, in such county, and who may wish to have the same inspected, attend and inspect the same; and for every such inspection, he shall be entiled to receive three cents for every barrel of flour, and ten cents for each barrel of beef or pork; and the said inspector shall not be entitled to receive any more than the rates aforesaid, under the penalty of fifty dollars for every such offence, to be recovered in any court having cognizance thereof.

Duties and fees of such inspectors—penalty for extortion.

SECT. 5. Each barrel of flour so inspected shall contain one hundred and ninety-six pounds of flour avoirdupois, and if of the first quality, shall be branded by the inspector "superfine," and each barrel of the second quality shall be branded "fine," and each barrel of the third quality shall be branded "middlings;" and in addition to the aforesaid brand, each barrel shall be branded "Indiana;" and for the inspection of flour, each inspector shall provide himself with a three-quarters of an inch barrel-auger, with which each barrel shall be bored into, so as to satisfy said inspector of the quality of the flour.

Weight of each barrel of flour, and how to be branded—size of auger.

SECT. 6. Each barrel of beef or pork inspected shall contain two hundred pounds avoirdupois, and the best quality of beef shall be denominated "mess beef," and be so branded; and the second quality shall be denominated and branded "prime beef;" and the best quality of pork shall be denominated and branded "mess pork;" and the second quality shall be denominated and branded "prime pork;" and the third quality shall be denominated and branded "Indiana cargo pork;" and when any such flour, beef, or pork, shall be found musty, sour, tainted, spoiled, or otherwise unfit for market, the same shall be condemned by such inspector.

Weight of each barrel of beef and pork, and how to be branded; when flour, beef, and pork shall be condemned.

SECT. 7. The board of county commissioners in any county in this state in which there shall not be an inspector, when they think proper so to do, may appoint an inspector, who shall hold his office during the pleasure of said board, whose duty it shall be, if applied to by the owner or owners, his or their agent or agents, to inspect all tobacco in hogsheads that may be offered for sale, or that may be grown and put up in hogsheads for sale or exportation, in such county, and shall brand the same on one end of the hogshead "first," "second," or "third" rate, agreea-

Inspector of tobacco, how appointed, duties, and fees.

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bly to the quality of the tobacco such hogshead may contain; for which inspection, the owner or owners of such tobacco shall pay to the inspector such sum as may be fixed upon by the board of county commissioners in such county, for each hogshead by him so inspected.

Penalty for altering brands.

SECT. 8. If any person shall alter or erase any brand or mark of any such inspector, so placed on any barrel of salt, flour, beef, pork, or hogshead of tobacco, he or they so offending shall, on conviction thereof, forfeit and pay the sum of fifty dollars for every such offence, to be recovered in any court having cognizance thereof.

Oath of office.

SECT. 9. Every such inspector appointed as aforesaid, before entering on the duties of his appointment, shall take an oath or affirmation, and the same shall be endorsed on the certificate of his appointment, as follows: "I —— —— do swear (or affirm) that I will faithfully and impartially, according to the best of my skill and judgment, perform the duties of my appointment of inspector, as within named."

THOMAS J. HENLEY,
Speaker of the House of Representatives.
THOMAS D. WALPOLE,
President pro tem. of the Senate.

APPROVED February 11, 1843.
SAM. BIGGER.

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PART II.

AN ACT CONCERNING THE ACQUISITION, THE ENJOYMENT, AND THE TRANSMISSION OF PROPERTY, REAL AND PERSONAL, THE DOMESTIC RELATIONS, AND OTHER MATTERS CONNECTED WITH PRIVATE RIGHTS.

WHEREAS, it is expedient that the several statutes of this state, relating to the matters embraced in the title of this act, should be consolidated and arranged under appropriate heads, and that omissions and other defects should be supplied:

Therefore,

BE it enacted by the general assembly of the state of Indiana as follows:

CHAPTER 28.

OF REAL PROPERTY AND THE ALIENATION THEREOF.

ARTICLE 1. Of the persons capable of holding and conveying lands.
ARTICLE 2. Of alienation by deed, and recording conveyances, mortgages, and other instruments of writing.
ARTICLE 3. Of estates tail and future estates.
ARTICLE 4. Of estates in dower.
ARTICLE 5. Of the title to real property by descent.
ARTICLE 6. Of tenant by the courtesy, estates at will and for years; and some general provisions respecting the liabilities of lessors, lessees, their assignees, and the recovery of rents, and also respecting easements.
ARTICLE 7. Of trusts, trustees, and powers.
ARTICLE 8. Miscellaneous provisions.

ARTICLE I.

Of the persons capable of holding and conveying lands.

SECTION
1. Who can hold lands.
2. Who can convey lands.
3. Sales of lands by Indians prohibited, except to an Indian.
4. Resident aliens may hold lands on recording affidavit, &c.
5. Cannot convey until naturalized.
6. Aliens in possession may hold if they record an affidavit, &c.
7. How heirs, &c. of aliens may hold lands, &c.
8. Alien, when naturalized, may hold lands previously acquired.
9. Liable for taxes, &c.
10. Alienism, &c. not to affect title in certain cases.
11. Aliens dying, how heirs may inherit
12. How heirs abroad may inherit.

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PART II.

Who capable to hold lands.

SECTION 1. Every citizen of the United States is capable of holding lands within this state, and of taking the same by descent, devise, or purchase.

Who capable to alien lands.

SECT. 2. Every person capable of holding lands, who may be seized of or entitled to any estate or interest in lands, except idiots, persons of unsound mind, and infants, may alien such estate or interest at his pleasure, with the effect, and subject to the restrictions and regulations provided by law.

Sales, &c. by Indians, prohibited.

SECT. 3. No Indian can hereafter make any contract for or concerning the sale of any lands within this state, or in any manner give, sell, devise, or otherwise dispose of any such lands, or any interest therein, by which such Indian shall be divested of the absolute control, possession, and management of such lands for a longer term than five years, without the authority or consent of the legislature of this state, except such sale, gift, or devise, shall be to an Indian.

Resident aliens may hold lands on making affidavit, &c.

SECT. 4. Any alien who has come, or who may hereafter come into this state, and who shall have filed in any court of competent jurisdiction the declaration of his intention to become a citizen of the United States, or who shall make an oath or affirmation in writing, before any officer of this state authorized to take the proof of deeds, to be recorded, that he is a resident of this state, and intends always to reside in the United States, and to become a citizen thereof as soon as he can be naturalized, shall be authorized and enabled to hold lands of any kind whatsoever, to him, his heirs, and assigns for ever; which oath or affirmation, certified by such officer, must be recorded in the recorder's office of the county or district in which such lands are situate.

Alien has no power to convey until naturalized.

SECT. 5. Any such alien shall have no power to convey, sell, or devise any real estate which he may take or hold by virtue of the provisions of the preceding section, until he become naturalized, except as provided in the seventh section of this article.

Aliens in possession, &c. may hold on complying with this article.

SECT. 6. Any alien in possession of any lands at the time this statute goes into effect, or at any time thereafter, by force of any purchase or devise, may be rendered capable of holding the same, as provided above, by complying with the provisions of this article.

Heirs and devisees of aliens may hold, &c.

SECT. 7. When any alien shall die within six years after making and recording such oath or affirmation, without having completed his naturalization, and leaving heirs or devisees, residents or citizens of the United States, such heirs or devisees shall take and hold any real estate of which such alien died seized, in the same manner as they would have inherited or taken the same if such alien, at the time of his death, had been a citizen of this state, upon their complying, if aliens, with the provisions of the fourth section of this chapter.

Alien becoming naturalized may hold lands

SECT. 8. If any alien shall heretofore have purchased, or shall hereafter purchase any real estate, or if any real estate shall have been devised, given, granted, or conveyed to any

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alien, when he was incapable of holding lands, or any estate or interest therein, by the laws of this state, and he shall subsequently become a naturalized citizen of the United States, before the same shall be adjudged to have escheated to the state of Indiana, upon office found in a court of competent jurisdiction, such alien shall hold, enjoy, and possess, and may assign, grant, alien, convey, and devise the same as fully as if he had been naturalized before his purchase thereof, or before the same had been devised, given, granted, or conveyed to him.

previously acquired.

SECT. 9. Every unnaturalized person who shall hold any real estate by virtue of the provisions of this article, shall be subject to duties, assessments, taxes, and burthens thereon, as if he were a citizen of this state.

Alien liable for taxes, &c. on such lands.

SECT. 10. No title or claim of any resident inhabitant of this state, who was in the actual possession of any lands on the first day of January, one thousand eight hundred and twenty-five, or at any time previous, shall be defeated or prejudiced as to his said title or claim on account of his own alienism or the alienism of any other person through or from whom his title or claim to such lands may have been devised.

Alienism prior to January 1, 1825, not to affect title to lands.

SECT. 11. If any person shall die after having filed the declaration of his intention to become a citizen of the United States, and before the final completion of his naturalization, his heirs and widow, if they have made, or shall make, their declaration to become citizens of the United States, shall be entitled to the estate on the same terms and conditions as in cases where he shall die after having filed his affidavit as above provided.

Aliens dying after declaration, heirs may inherit.

SECT. 12. In all cases where an alien shall die after having filed his affidavit or declaration as aforesaid, and before completing his naturalization, and leaving no heirs in the country capable of inheriting, his widow and family, on coming to the United States, and making the declaration of their intention to become citizens as aforesaid, may take possession of such estate, and the same shall vest in them as fully and completely as if the deceased, his family, and widow had been citizens of the United States at the time of his death.

Heirs abroad may inherit estate of alien ancestor, &c.

ARTICLE II.

Of alienation by deed, and recording conveyances, mortgages, and other instruments of writing.

SECTION

13. Conveyances of lands, &c., to be by deed in writing.
14. To be attested by a witness unless acknowledged.
15. Power of attorney to convey lands to be in writing, sealed, &c.
16. Estates created by parol estates at will only, except leases not exceeding three years.
17. Husband and wife may convey her real estate by their joint deed.

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SECTION
18. Certain estates to be deemed estates in common, and not joint tenancies.
19. Cases in which the last section shall not apply.
20. Effect of release on quit claim.
21. No covenant shall be implied in conveyances of real estate.
22. Lineal and collateral warranties abolished.
23. Effect of certain conveyances.
24. How far a deed is valid if not recorded.
25. Deeds and leases to be recorded within ninety days.
26. Mortgages shall be recorded within ninety days.
27. Defeasances required to be recorded.
28. Deed, &c., must be acknowledged before it shall be recorded.—What officers shall take acknowledgments.
29. If the grantor refuse to acknowledge the deed, its execution may be proved.
30. Execution proved by witnesses, &c., and certificate thereof.
31. How proved when the grantor is dead, &c.
32. How proved when grantor and witnesses are dead, &c.
33. Mode of procuring the attendance of witnesses, &c.
34. A copy of the deed may be filed with the recorder, by way of caution, before proof of its execution.
35. Certificate of proof to be endorsed on the deed—its contents.
36. Cannot be proved unless there is a subscribing witness.
37. Acknowledgment or proof taken in another county, how certified, &c.
38. Acknowledgment or proof taken in another state, before whom and how certified.

SECTION
39. Acknowledgment or proof taken out of the United States, before whom and how certified.
40. Acknowledgment of deed by husband and wife.
41. Acknowledgment of a deed by a married woman under age.
42. Acknowledgment by a married woman, must be certified on the deed.
43. Woman may join with her husband in a letter of attorney to convey lands.
44. Form of the certificate of acknowledgment or proof of deed.
45. Where the acknowledgment or proof must be taken.
46. Entries to be made by the recorder at the time of receiving conveyances for record.
47. Copy left with recorder by way of caution, to be also entered and effect thereof.
48. Deed and certificate to be recorded in the county where the land lies.—Unless certificate is recorded, record shall not be evidence.
49. Acknowledged or proved deed may be read in evidence without proof of its execution, and also the record.
50. Certificate of acknowledgment or proof not conclusive.
51. Certificate in certain cases not evidence, &c., but the record to be notice, &c.,
52. Terms "lands" and "real estate" defined.
53. The term "grantor" defined.
54. What instruments shall be recorded.
55. Of recording letters of attorney, and executory contracts for lands, and the effect thereof.

Conveyance of land to be by deed. See sec. 15, 16.

SECT. 13. Conveyances of lands, or of any estate or interest therein, shall be by deed in writing, subscribed and sealed by the person from whom the lands, estate, or interest conveyed is intended to pass, or by his lawful attorney.

When to be attested by a witness.

SECT. 14. If such deed is not duly acknowledged previous to its delivery, according to the provisions of this article, its execution and delivery shall be attested by at least one witness; but if such deed is thus acknowledged previous to delivery, no attesting witness shall be necessary; and any such deed thus

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executed shall take effect from the time of its delivery without any other act or ceremony whatsoever. ARTICLE 2.

SECT. 15. When any conveyance shall be executed by attorney or agent, such attorney or agent shall be empowered by an instrument in writing, executed by his principal, and sealed and acknowledged in like manner as such conveyance would be required to be executed and acknowledged by the principal. Power of attorney to convey lands to be sealed, &c.

SECT. 16. No estate or interest whatsoever in lands, unless created or conveyed by some instrument in writing, and signed by the grantor or person making the same, or by his lawful attorney, shall have any greater force or effect than an estate or lease at will; and no estate or interest whatsoever in lands shall be assigned, granted, or surrendered, unless by some instrument in writing signed as aforesaid, or by operation of law; except, nevertheless, all leases not exceeding the term of three years from the making thereof, upon which the rent reserved during such term shall amount to at least one-half of what the rent thereof is really worth. Estates created by parol estates at will only. Leases not exceeding three years excepted.

SECT. 17. The joint deed of the husband and wife, upon complying with the provisions of the fortieth section of this chapter, shall be sufficient to convey and pass the real estate of the wife, but not to bind her to any covenant or estoppel therein. Husband and wife may convey her real estate by joint deed.

SECT. 18. All conveyances and devises of lands, or of any interest therein, made to two or more persons, except as provided in the next following section, shall be construed to create estates in common and not in joint tenancy; unless it shall be expressed therein that the grantees or devisees shall hold the same in joint tenancy and to the survivor of them, or it shall manifestly appear, from the tenor of the instrument, that it was intended to create an estate in joint tenancy. Certain estates shall be estates in common, and not joint tenancies.

SECT. 19. The preceding section shall not apply to mortgages nor to conveyances in trust, nor when made to husband and wife; and every estate vested in executors, or trustees as such, shall be held by them in joint tenancy. Cases in which the last section shall not apply.

SECT. 20. A deed of release or quit claim of the usual form shall pass all the estate which the grantor had and could convey by a deed of bargain and sale. Effect of release or quit claim.

SECT. 21. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain real covenants or not. No covenant implied in deed.

SECT. 22. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who shall have made any covenant or agreement shall be answerable upon such covenant or agreement to the extent of the lands descended or devised to them, and in the manner prescribed by law. Lineal and collateral warranties abolished. See chap. 29, art. 16.

SECT. 23. No greater estate or interest shall be construed to pass by any conveyance than the grantor himself possessed at the delivery of the deed, or could then lawfully convey, except that every grant and conveyance shall be conclusive as against the grantor and his heirs claiming from him by descent. Effect of certain conveyances. See sec. 64.

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How far a deed is valid if not recorded.

SECT. 24. No conveyance of any estate in fee simple, or for life, or of any future estate, and no lease for more than three years from the making thereof, shall be valid and effectual against any person other than the grantor, his heirs and devisees, and persons having actual notice thereof, unless it is made by a deed recorded within the time and in the manner provided in this article.

What deeds are required to be recorded.

SECT. 25. Every conveyance of any real estate in fee simple, or of any interest therein, or for life, or of any future estate, and every lease for more than three years from the making thereof, shall be recorded in the recorder's office of the county where such real estate or leasehold shall be situated; and every such conveyance or lease not so recorded within ninety days from the execution thereof, shall be fraudulent and void as against any subsequent purchaser or mortgagee, in good faith, and for a valuable consideration, of the same real estate or any part thereof.

Mortgages to be recorded. 4 Kent 168.

SECT. 26. Every deed or conveyance in the nature of a mortgage of real estate, or of any interest or estate therein, shall be recorded in the recorder's office of the county wherein the same is situated, within ninety days after the execution thereof; and if not so recorded, the same shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee in good faith and for a valuable consideration.

Defeasance, &c. to be recorded.

SECT. 27. When a deed purports to contain an absolute conveyance of any estate in lands, but is made, or intended to be made, defeasible by force of a deed of defeasance, bond, or other instrument for that purpose, the original conveyance shall not thereby be defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the record of deeds for the county where the lands lie.

Deed before record thereof must be acknowledged.

SECT. 28. To entitle any deed, conveyance, mortgage, or instrument of writing to be recorded, it shall be acknowledged by the party or parties executing the same, or shall be proved by a subscribing witness thereto, or by proof of the handwriting of the party or parties thereto, or of any subscribing witness as herein after provided, before any supreme judge, judge of a circuit court, justice of the peace, recorder, notary public, or mayor of a city within this state, or before any judge of a supreme or circuit court, or court of common pleas, justice of the peace, or mayor or recorder of a city, or notary public, of any other state, or before any commissioner appointed by the governor of this state in another state, for such purpose, or before any minister, charge d'affaires, or consul of the United States in any foreign country.

Before whom acknowledged.

If grantor refuse to acknowledge, &c. may be summoned, &c.

SECT. 29. If any grantor shall refuse to acknowledge any deed, conveyance, or instrument of writing executed by him, which by law is required to be recorded, the grantee, or any

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person claiming under him, may apply to any officer authorized by law to take the acknowledgment of such deed, conveyance, or instrument of writing, in the county where the land lies, or where such grantor or any subscribing witness resides; and such officer shall thereupon issue a summons to such grantor to appear at a certain time and place before such officer, to hear the testimony of the subscribing witness to the deed; and such summons, with a copy of the deed annexed, shall be served by such person as such officer shall designate, at least seven days before the time therein assigned for proving the deed, conveyance, or other instrument of writing.

Execution of the deed may be proved, &c. and certified thereon.

SECT. 30. At such hearing, or at any adjournment thereof, the due execution of such deed, conveyance, or instrument in writing, may be proved by the testimony of one or more of the subscribing witnesses thereto; or if they are dead, insane, or out of the state, then by due proof of the handwriting of the grantor or of any witness thereto; and if proved to the satisfaction of the officer, he shall certify the same on the deed, conveyance, or instrument, in writing, and in such certificate shall note the presence or absence, as the case may be, of such grantor.

If grantor dead or out of the state, how proved.

SECT. 31. If the grantor in any deed, conveyance, or instrument in writing required to be recorded, shall be dead, or shall have left the state, or cannot be found, and shall not have acknowledged the same, it may be proved before any officer authorized to take the acknowledgment thereof, by the testimony of any subscribing witness thereto.

If grantor and witnesses dead, insane, &c. how proved.

SECT. 32. If any such grantor shall refuse to acknowledge any such deed, conveyance, or instrument in writing, or shall be dead or out of the state, and the subscribing witness or witnesses thereto are dead, out of the state, or cannot be found, the same may be proved before any officer authorized to take the acknowledgment thereof, by proving the handwriting of the grantor or grantors, or of any subscribing witness thereto.

Mode of enforcing the attendance of witnesses.

SECT. 33. The officer before whom such proof as aforesaid is to be made, may issue his summons for the attendance of witnesses, and may compel their attendance and testimony by attachment and fine; and the examination of witnesses touching such proof shall be under oath, which oath the said officer is fully authorized to administer: all summonses and attachments in such cases shall be served by a constable of the township where such officer resides; for which service he shall receive the same fees as are allowed for similar services in civil causes pending before a justice of the peace; to be paid by the party in whose favor such proof may be taken.

Copy of deed before proof may be filed with recorder by way of caution.

SECT. 34. Any person interested in any such deed, conveyance, or instrument of writing, may at any time before or during such application, to prove the execution therof, as above provided, where the grantor has refused or failed to acknowledge the same, file, by way of caution, in the recorder's office, a copy of the deed, conveyance, or instrument in writing, compared

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with the original by the recorder, which shall, for the space of thirty days thereafter, have the same effect as the recording of the original, if such original shall within that time be duly proved and recorded.

Certificate of proof to be endorsed on deed —its contents.

SECT. 35. Where the execution of any deed or conveyance has not been acknowledged, and proof thereof is made as herein provided, by proving its execution by a subscribing witness, or by proving the handwriting of the party or parties thereto, or any subscribing witness, the proof thereof must be by a disinterested and competent witness; and the testimony of the witnesses examined by such officer, with the names and places of residence, shall be set forth by the officer in his certificate of sach proof.

No proof to be taken unless there is a subscribing witness.

SECT. 36. No conveyance or instrument required to be recorded, shall be proved in the manner above provided unless it have at least one subscribing witness thereto, who attested the same at the execution thereof, or subsequently, by the request of the grantor therein.

Acknowledgment, &c., taken in another county to be certified, &c.

SECT. 37. When any deed, conveyance, mortgage, or other instrument required to be recorded, is acknowledged or proved in any other county in this state than the one in which the same is required to be recorded, the acknowledgment or proof thereof may be taken by any officer herein authorized to take such acknowledgment or proof, and certified by the clerk of the circuit court of the county in which such officer resides, and attested by the seal of said court, except when such acknowledgment or proof is taken by a notary public or mayor of a city, in which case such acknowledgment or proof, certified and attested under the hand and official seal of such notary or mayor, shall be sufficient.

Deeds acknowledged in another state, how certified.

SECT. 38. All deeds and conveyances, acknowledged or proved out of this state and within the United States, or any of the territories thereof, and brought hither to be recorded, may be acknowledged or proved before any officer herein authorized to take such acknowledgment or proof, in another state, and certified by the clerk of any court of record of the county in which such officer resides, and attested by the seal of said court, unless such acknowledgment or proof shall have been taken before the mayor or recorder of a city, notary public, or commissioner to take the acknowledgment of deeds, appointed by the governor of this state; in which case such acknowledgment or proof shall be certified under the hand of such officer, and attested by his official seal.

Deeds acknowledged out of the United States, how certified.

SECT. 39. If the parties executing any deed, conveyance, or other instrument which is to be recorded in this state, shall acknowledge the same in any foreign country, the acknowledgment or proof therof as aforesaid, shall be certified under the hand and official seal of the minister, charge d'affaires, or consul of the United States taking the same.

Acknowledgment of deed

SECT. 40. The acknowledgment of the execution of any deed or conveyance by which a married woman releases and

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ARTICLE 2.

relinquishes her dower in any lands conveyed, granted, or assigned by her husband, or by which the husband and wife convey the real estate of the wife, may be taken before any officer herein authorized to take the acknowledgment of deeds; but such acknowledgment shall not be taken by such officer unless he shall first make known to her the contents and purport of such deed or conveyance, and she acknowledge on a private examination, separate and apart from, and without the hearing of, her husband, that she executed such deed or conveyance of her own free will and accord, and without any coercion or compulsion from her husband; all of which shall be certified by such officer in his certificate of such acknowledgment.

by husband and wife. See sect. 17.

SECT. 41. Any married woman over the age of eighteen years, and under the age of twenty-one years, may release and relinquish her right to dower in any lands of her husband, sold and conveyed by him, by executing, and acknowledging the execution of such conveyance, as provided in the last preceding section, if the father or guardian of such married woman, shall declare, before the officer taking such acknowledgment, that he believes that such release and relinquishment of dower is for the benefit of such married woman, and that it would be prejudicial to her and her husband, to be prevented from disposing of the lands thus conveyed; which declaration, with the name of such father or guardian, shall be inserted as a part of the certificate of the officer taking such acknowledgment.

Acknowledgment of a deed by a married woman under age.

SECT. 42. No dower estate or interest whatever of any married woman, shall be barred, passed, or conveyed by any deed or conveyance purporting to be executed by her, unless the same shall be acknowledged, and such acknowledgment certified as above provided; nor shall any deed or coveyance of any married woman be recorded by the recorder, unless such acknowledgment shall be certified, or certified and attested, as in this article is required.

Acknowledgment of a deed by a married woman must be certified, &c.

SECT. 43. A married woman may join in a power of attorney with her husband for the conveyance of real estate, or of any interest therein; and any conveyance, mortgage, assurance, or relinquishment, duly executed by the agent named in such power, within his authority, shall operate to pass, convey, assign, relinquish, and bar any estate or interest such married woman may have in such real estate, of her own right or as dower, if such power of attorney is executed and acknowledged by such husband and wife in like manner as is herein before required in cases of conveyance by husband and wife.

Power of attorney by a married woman to convey lands.

SECT. 44. A certificate of the acknowledgment of the deed or conveyance required to be recorded, under the hand and seal of the officer taking the same, or a certificate of the proof of the execution thereof, as above provided, shall be endorsed upon such deed or conveyance, or annexed thereto, setting forth in such certificate the matters herein required to be done, acknowledged, or proved, and also the certificate and attestation of the clerk of the court of the county where the officer

Form of certificate of acknowledgment or proof of deed.

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taking such acknowledgment or proof resides, whenever such certificate and attestation shall be required by law; and no deed or conveyance shall be admitted to record by the recorder, unless the same is acknowledged or proved, and such acknowledgment or proof duly certified, or certified and attested, as in this article required.

Where the proof or acknowledgment must be taken.

SECT. 45. No acknowledgment or proof of the execution of any deed or conveyance taken by any officer authorized to take the same, shall entitle such deed or conveyance to be recorded unless taken in the county, district, place, state, territory, or country, to which the jurisdiction of such officer extends, or within which he is required to reside.

Entries by the recorder.

SECT. 46. Every recorder of deeds shall keep a book, each page of which shall be divided into five columns headed as follows, to-wit:

Date of reception.	Names of grantors.	Names of grantees.	Description of lands.	Fees.

Mode of making such entries.

And the recorder shall enter in said book, all deeds and other instruments left with him to be recorded; noting in the first column the day and hour of receiving such deed or instrument, and the other particulars in the appropriate columns; and every such deed or instrument shall be deemed as recorded at the time so noted.

Copy left with the recorder by way of caution to be also entered and effect thereof.

SECT. 47. All copies left with the recorder by way of caution shall, in like manner, be entered in such book; and if proof of the original deed shall be made within the thirty days, as above required, such original deed shall be deemed as recorded from and after the time such copy is thus noted.

Deed and certificate to be recorded in the county where the lands lie. Unless the certificate of acknowledgment or proof is recorded, no such record or copy thereof shall be evidence.

SECT. 48. Every conveyance, deed, or other instrument of writing, entitled by law to be recorded, shall be recorded by the recorder of the county in which the lands, or estate, or interest in lands, embraced in such conveyance, is situate; together with the requisite certificate of acknowledgment or proof endorsed thereon or annexed thereto; and unless such certificate is recorded with such deed, neither the record of such conveyance, deed, or other instrument of writing, nor any transcript thereof, shall be read or received in evidence.

Acknowledged or proved deed may be read in evidence without proof of its execution.

And also the record of such deed.
4 Blackf. 522.
5 ib. 106.
5 ib. 123.

SECT. 49. Every conveyance, acknowledged by the grantor or party or parties executing the same, or the execution thereof being duly proved before the proper officer, in any case where the grantor has refused to acknowledge the same, and has been duly summoned by the grantee to appear before the officer before whom such proof is made; and such acknowledgment or proof having been duly certified so as properly to entitle said conveyance to be recorded, may be read in evidence in any court of law or equity, without further proof thereof, either as to its execution or its acknowledgment; and the record of any such conveyance, or a transcript thereof duly certified or

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proved, may also be read in evidence with the like force and effect as the original thereof. ARTICLE 2.

Acknowledgment or proof not conclusive.

SECT. 50. Neither the certificate of the acknowledgment of any deed, conveyance, or instrument of writing, nor the record, nor the transcript of the record thereof, shall be conclusive, but may be rebutted, and the force and effect thereof contested, by any party affected thereby.

Certificate in certain cases not evidence; but the record to be notice, &c.

SECT. 51. The certificate of the proof of the execution of any conveyance before any officer authorized to take and certify such proof, unless the grantor has been duly summoned to appear at the proving thereof, shall not entitle such conveyance or the record or transcript thereof to be read in evidence, unless the execution of such conveyance has been established by other competent proof; but such certificate of proof, duly made and recorded along with such conveyance, shall be constructive notice of the execution of such conveyance, in like manner as if the same had been duly acknowledged by the grantor or party executing the same previous to its being recorded.

Terms 'lands,' &c., defined.

SECT. 52. The terms "lands" and "real estate" as used in this article, shall be construed as coextensive in meaning with "lands, tenements, and hereditaments," and as embracing all chattels real, except leases for a term not exceeding three years.

Term 'grantor' defined.

SECT. 53. The term "grantor," as used in this article, shall be construed to embrace every person by whom any estate or interest in real estate is created, granted, bargained, sold, conveyed, transferred, or assigned.

What instruments shall be recorded.

SECT. 54. All deeds, conveyances, deeds of mortgage, and all instruments of writing of and concerning lands, or of and concerning any estate, or interest therein, whereby such lands, estate, or interest, may be affected in law or equity, except last wills and testaments, leases for a term not exceeding three years, and executory contracts for the sale and purchase of land, shall be deemed a conveyance within the provisions of this article, so far as such provisions apply to the acknowledgment or proof of the same, the recording thereof, and the force and effect of such recording.

Of recording letters of attorney and executing contracts for lands, and the effect thereof.

SECT. 55. Letters of attorney, containing a power to any one to sell or convey, or to sell and convey lands as the agent of the owner of the lands, and every executory contract for the sale or purchase of lands, when proved or acknowledged in the manner prescribed in this article for the proof or acknowledgment of conveyances, may be recorded in the county in which the lands to which such letter or contract shall relate may be situate; and when so proved or acknowledged, and the record thereof when recorded, and the transcript of such record, when duly certified, may be read in evidence, in the same manner, and with the like effect as in the case of a conveyance.

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ARTICLE III.

Of estates tail and future estates.

SECTION

56. Estates tail abolished—their nature declared.
57. Certain remainders valid.
58. Future estates.
59. Remainders, and future and contingent estates, how created.
60. Two or more future estates, &c.
61. Remainder upon a contingency.
62. Certain future estates not to be void.
63. Remainders not to be defeated in certain cases.
64. Effect of certain conveyances.
65. Expectant estate not barred by alienation, &c. of precedent estate.
66. Limitation of successive estates for life, &c.
67. When remainder shall take effect in certain cases.
68. Remainder upon certain estates for life.

SECTION

69. When a remainder shall take effect in certain cases.
70. Contingent on a term of years.
71. Limitation of chattels real.
72. Expectant estates, when deemed created.
73. Meaning of terms 'heirs,' and 'issue' in case of certain remainders.
74. Posthumous children.
75. Accumulation of rents and profits of lands.
76. Other directions for such accumulation, when void in part.
77. Application of such rents, &c. to support infants.
78. In certain cases who entitled to rents and profits of lands.
79. Disposition of rents, &c., how governed in certain cases.

Estates tail abolished—their nature declared.

SECT. 56. All estates tail are abolished: and all estates which, according to the common law, would be adjudged a fee tail, shall hereafter be adjudged a fee simple; and if no valid remainder shall be limited thereon, shall be a fee simple absolute.

Certain remainders valid. 4 Kent, 280. Same, 200. Note B.

SECT. 57. Where a remainder in fee shall be limited upon any estate which would be adjudged a fee tail, according to the law as it existed prior to the abolition of estates tail in this state, such remainder shall be valid as a contingent limitation upon a fee, and shall vest in possession, on the death of the first taker without issue, living at the time of such death.

Future estates. 4 Kent, 271.

SECT. 58. A future estate shall be deemed and construed to be any estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of any precedent estate, created at the same time; and when any such future estate is dependent on a precedent estate, it may be termed a remainder.

When they are remainders.

Remainders, future, and contingent estates, how created. 4 Kent, 271, 300, 252.

SECT. 59. A freehold estate, as well as a chattel real, may be created to commence at a future day; and an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold, or a chattel real, either contingent or vested, may be created, expectant on the determination of a term of years, and a fee may be limited on a fee, upon a contingency, which, if it should occur, must happen within the period prescribed in this article.

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SECT. 60. Two or more future estates may be created, to take effect in the alternative; so that, if the first in order shall fail to vest, the next in succession shall be substituted for it, and take effect accordingly.

Two or more future estates. 4 Kent, 201.

SECT. 61. A remainder may be limited on a contingency, which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder shall be construed a conditional limitation, and shall have the same effect as such a limitation would have by law.

Remainder upon a contingency. 4 Kent, 250.

SECT. 62. No future estate otherwise valid, shall be void on the ground of the probability or improbability of the contingency on which it is limited to take effect.

Certain future estates not to be void. 4 Kent. 207. Note *a*.

SECT. 63. No remainder, valid in its creation, shall be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder is limited to take effect; but should such contingency afterwards happen, the remainder shall take effect in the same manner and to the same extent as if the precedent estate had continued to the same period.

Remainder not to be defeated in certain cases. 4 Kent, 214, 254. Note *d*, 252.

SECT. 64. A conveyance made by a tenant for life or years, purporting to grant or convey a greater estate than he possessed, or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee or alienee all the estate which the tenant could lawfully convey.

Effect of certain conveyances. See above, sect. 23. 4 Kent, 82. 4 Kent, 246, 255. Note *b*, 254. Note *d*.

SECT. 65. No expectant estate shall be barred by any alienation, or other act of the owner of the precedent estate, nor by any destruction of such precedent estate by disseisin, or the forfeiture, surrender, or merger thereof.

Expectant estate not barred by alienation, &c. of precedent estate.

SECT. 66. The absolute power of aliening real estate shall not be suspended by any limitation or condition whatever, contained in any grant, conveyance, or devise, for a longer period than during the existence of a life, or any number of lives, in being at the creation of the estate conveyed, granted, or devised, and therein specified, with the exception that a contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the person or persons to whom the first remainder is limited shall die under the age of twenty-one years, or upon any other contingency by which the estate of such person or persons may be determined, before they attain their full age.

Limitation of successive estates for life, &c. 4 Kent, 199. Note *c*.

SECT. 67. Where a remainder for life shall be limited on any other than a life or lives in being at the creation of such estate, all the life estates, subsequent to those persons entitled to take life estates, according to the provisions of the last preceding section shall be void; and upon the death of those persons entitled to take, the remainder shall take effect, in the same manner as if such void estates had not been created.

When remainder shall take effect in certain cases. 4 Kent, 199. Note *c*.

SECT. 68. No remainder shall be created upon an estate for the life of any other person or persons than that of the grantee or devisee of such estate, unless such remainder be an estate in fee; nor shall any remainder be created upon such an

Remainder upon certain estates for life. 4 Kent, 199. Note *c*.

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estate for life, in a term for years, unless such remainder be for the whole residue of the term.

When a remainder to take effect in certain cases.

4 Kent, 199. Note c.

SECT. 69. When a remainder shall be created upon any such life estate as is specified in the last preceding section, and more persons shall be named, as the persons during whose lives the life estate shall continue, than were in being at the creation of such estate, such remainder shall take effect upon the death of the persons entitled, under the conveyance, grant, or devise, according to the provisions of this article, in the same manner as if no other lives had been introduced therein.

Contingent remainder on a term of years.

4 Kent, 251.

SECT. 70. A contingent remainder shall not be created on a term of years, unless the nature of the contingency on which such remainder is limited be such, that the remainder must vest in interest, during the continuance of one or more lives, in being at the creation of such remainder, or at the termination of said lives; and no estate for life shall be limited, as a remainder on a term of years, except to a person in being at the creation of such estate.

Limitation of chattels real.

4 Kent, 283.

SECT. 71. All the provisions contained in this article respecting future estates, shall be construed to apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years shall not be suspended for a longer period than the absolute power of alienation can be suspended, in respect to a fee.

Expectant estates, when deemed created

SECT. 72. The delivery of the deed, where an expectant estate is created by deed, and the death of the testator, where it is created by devise, shall be deemed the time of the creation of the estate.

Meaning of "heirs" and "issue" in certain remainders.

4 Kent, 280.

SECT. 73. Where a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

Posthumous children.

SECT. 74. Where a future estate shall be limited to heirs, or issue, or children, posthumous children shall be entitled to take the estate, in the same manner as if born before the death of their parent; and any future estate depending on the contingency of the death of any person without heirs, or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

Accumulation of rents and profits of lands.

SECT. 75. An accumulation of rents and profits of real estate for the benefit of one or more persons, may be directed by any will or deed sufficient to pass real estate, as follows:

1. If such accumulation be directed to commence on the creation of the estate out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and must terminate at the expiration of their minority.

2 Blackstone, 174. Note 4.

2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, such accumulation must, where

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the accumulation is created by deed, terminate at the death of the grantor, if the grantees are of age at his death, and if minors then at the expiration of their minority; and if such accumulation is by will, it must be for the benefit of one or more minors then in being, and terminate at the expiration of their minority.

Other directions, when void in part.

SECT. 76. If in any of the cases mentioned in the last preceding section, the direction for such accumulation shall be for a longer term than during the life of the grantor, or after his death, then longer than the minority of the persons intended to be benefited thereby, it shall be void for the time beyond such minority; and all directions for the accumulation of the rents and profits of real estate, except such as are allowed in this article, shall be void.

Application of such rents, &c. to support infants.

SECT. 77. Where such rents and profits are directed to be accumulated for the benefit of infants entitled to the expectant estate, and such infants shall be destitute of other sufficient means of support and education, the probate court, upon the application of their guardian, may direct a suitable sum, out of such rents and profits, to be applied to their maintenance and education.

In certain cases who entitled to rents and profits of lands.

SECT. 78. When, in consequence of a valid limitation of an expectant estate, there shall be a suspense of the power of alienation, or of the ownership, during the continuance of which the rents and profits shall be undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the persons presumptively entitled to the next eventual estate.

Disposition of rents, &c. how governed in certain cases.

SECT. 79. Dispositions of the rents and profits of lands to accrue and be received at any time subsequent to the execution or taking effect of the instrument creating such disposition, shall be governed by the rules and principles in relation to future estates in lands.

ARTICLE IV.

Of estates in dower.

SECTION

80. The interest in lands of which the widow shall be endowed.
81. Her dower in case of a purchase of real estate, not conveyed.
82. How endowed when the purchase money is paid out of husband's estate.
83. How endowed when lands are sold for the purchase money after the husband's death.
84. Not endowed of trust estate in certain cases.

SECTION

85. How endowed when lands have been exchanged.
86. How far entitled to dower in case of a mortgage before marriage.
87. How far entitled to dower in case of a mortgage to secure purchase money.
88. Although barred by a mortgage, she shall be endowed of the surplus after sale, &c.
89. Shall have her dower, except against mortgagee, in certain cases.

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SECTION
90. How endowed when such mortgage is redeemed.
91. She may have her full dower by contributing, &c., in certain cases.
92. Dower of the widow of a mortgagee.
93. In what case her dower shall be forfeited.
94. The widow may bar her right of dower by joining in conveyance.
95. Cases in which her dower shall not be barred.
96. When barred by jointure.
97. Of what estate in lands such jointure must consist.
98. When barred by a pecuniary provision.
99. Evidence of her assent.
100. When to elect between jointure, &c., and dower.
101. When to elect between devise, &c., and dower.
102. How she shall declare her election.
103. Jointure may be forfeited as well as dower.
104. If evicted she may be endowed anew.
105. Her alienage shall not affect her dower in certain cases.
106. Dower in the place wasted, shall be forfeited.
107. She shall maintain the houses, &c., and may take fuel, &c.

The interest in lands of which the widow shall be endowed.

SECT. 80. The widow, subject to the provisions and restrictions of law, shall be endowed of one full and equal third part of all the lands the legal title to which was in her husband, or in any person to and for his use and benefit, at any time during the coverture, and also of any lands in which, or in any part of which, her husband had an equitable interest at the time of his death, unless her right to dower in any such lands has been legally barred.

Her dower in case of a purchase of real estate not conveyed.

SECT. 81. If the husband shall have made a contract for any real estate, and at the time of his death had paid the full amount of the purchase money or consideration, and was entitled to a conveyance therefor, his widow shall be as fully and completely endowed thereof, as if such conveyance had been executed.

How endowed when the purchase money is paid out of husband's estate.

SECT. 82. If the husband shall have made a contract for any lands, and at the time of his decease the purchase money or consideration, in whole or in part, shall not have been paid, but after his death, the same shall be paid out of the proceeds of his estate, his widow shall be endowed of said lands in the same manner as if the legal estate had vested in him during the coverture.

How endowed when land sold for the purchase money due after the husband's death.

SECT. 83. If the husband shall have made any valid contract, subsisting at the time of his death, for any real estate, and paid only a part of the purchase money, and such real estate shall be sold after his death under any decree of a court of competent jurisdiction, or by virtue of any power or devise in the will of the husband, the widow shall be entitled to dower in such real estate, in proportion to the amount paid under said contract by the said husband.

Not endowed of trust estate in certain cases.

SECT. 84. The widow shall not be endowed of any estate or interest which the husband may have in any trust estate, unless the husband shall have had a beneficial interest therein; in which case she shall be endowed in proportion to the extent of estate or interest, if such estate or interest might go to his heirs.

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How endowed when lands have been exchanged.

SECT. 85. If a husband seized or possessed of any estate or interest in lands of which his widow would be dowable, exchange the same for other lands in which she might, in like manner, be endowed, she shall not have dower of both, but shall make her election of which she will be endowed, and if she shall not declare such election by the commencement of proceedings to recover her dower, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

How far entitled to dower in case of a mortgage before marriage.

SECT. 86. Where a person seized of an estate of inheritance in lands, shall have executed a mortgage of such estate before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

How far entitled to dower in case of a mortgage to secure purchase money.

SECT. 87. Where a husband shall purchase lands during the marriage, and shall, at the same time, mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands as against such mortgagee, or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to her dower in such lands as against all other persons.

Although barred by a mortgage she shall be endowed of the surplus after sale, &c.

SECT. 88. In all cases where a mortgage shall be sufficient to bar the widow of her dower or defeat her claim thereto, and and the mortgagee shall cause the land mortgaged to be sold, either under a power of sale contained in such mortgage, or by virtue of a decree of a court of competent jurisdiction, in proceedings instituted on such mortgage, and any surplus shall remain after payment of the moneys due on such mortgage and the costs and charges of the sale, such widow shall, nevertheless, be entitled to the interest or income of the one third part of such surplus, for her life, as her dower.

Shall have her dower, except against the mortgagee, in certain cases.

SECT. 89. If upon any mortgage made by a husband, his wife shall have released her right of dower, or if the husband shall have been, during the marriage, seized of land subject to any mortgage which is valid and effectual, as against his wife, she shall, nevertheless, be entitled to dower in the mortgaged premises, as against every person, except the mortgagee and those claiming under him.

How endowed when such mortgage is redeemed, &c.

SECT. 90. If in any case specified in the last preceding section, the husband shall die intestate, and such mortgage shall be redeemed out of the personal estate of the husband, the widow shall be entitled to dower.

She may have full dower by contributing, &c. in case of a mortgage.

SECT. 91. If such mortgage shall be redeemed by the heirs, or any other person claiming under the husband, out of their own estate, the widow may be entitled to full dower in such premises, by contributing with or repaying to such heirs or other person, a sum of money equal in amount to the proportion which her interest in the mortgaged premises, exclusive of the mortgage, bears to the whole value of such mortgaged estate: or she shall at her election be entitled to dower only according

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to the value of the estate, after deducting the money so paid for the redemption thereof, by such heirs or other persons.

Dower of the widow of a mortgagee.

SECT. 92. A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless, during the marriage, he acquire an absolute estate which finally and absolutely forecloses and bars the mortgagor's equity of redemption therein.

In what case her dower shall be forfeited.

SECT. 93. If a wife leave her husband, and live with her adulterer, she shall be barred forever of her dower; but if the husband become reconciled to her, and suffer her to dwell with him, she shall be restored to her right of dower.

The widow may bar her right of dower by joining in conveyance.

SECT. 94. A married woman may bar her right of dower in any estate conveyed by her husband, by joining with him in the deed conveying the same, and therein releasing her dower; or by releasing the same by a subsequent deed, executed jointly with her husband, in either case acknowledging such deed according to law: she may in like manner bar her dower by joining in the execution of any deed with the guardian or trustee of her husband, in the execution of any conveyance, made under the decree of any court of equity, or with the officer, commissioner, or trustee, selling and conveying the real estate of the husband, by virtue of any execution, decree, or mortgage.

Cases in which her dower shall not be barred.

SECT. 95. No act, deed, or conveyance, performed or executed by the husband, without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law; nor any sale, disposition, transfer, or incumbrance, of the husband's property, by virtue of any decree, execution, or mortgage, to which she shall not be party, except as provided otherwise in this article, shall prejudice or extinguish the right of the wife to her dower or jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.

When barred by jointure.

SECT. 96. Whenever an estate in lands shall be conveyed to a person and his intended wife, or to such intended wife alone, or to any person in trust for such person and his intended wife, or in trust for such wife alone, for the purpose of creating a jointure for such intended wife, and with her assent, the same shall be a bar to any right or claim of dower of such wife in any lands of the husband.

Of what estate in lands such jointure must consist.

SECT. 97. Such jointure, if consisting of real estate, must not be less than a freehold estate in lands, for the life of the wife at least, to take effect in possession or profit, immediately on the death of the husband.

When barred by a pecuniary provision.

SECT. 98. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to, bar her right of dower in all the lands of the husband.

Evidence of her assent.

SECT. 99. The assent of the wife to any such jointure shall be evidenced, if she be of full age, by her becoming a party to the conveyance or instrument by which such jointure is settled;

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if she be an infant, by her joining therein with her father or guardian.

When to elect between jointure, &c. and dower.

SECT. 100. If before her coverture, but without her assent, or if, after her coverture, any such jointure or pecuniary provision shall be assured, or given for her jointure in lieu of dower, she shall make her election, within one year after the death of her husband, whether she will take such jointure or pecuniary provision, or whether she will be endowed of the lands of her late husband, but she shall not be entitled to both.

When to elect between devise &c. and dower.

SECT. 101. If lands be devised to a woman, or a pecuniary or other provision be made for her by the will of her late husband, in lieu of dower, she shall make her election whether she will take the lands so devised, or the provision so made, or whether she will be endowed of the lands of her late husband; but she shall not be entitled to both, unless it plainly appears by the will to have been the intention of the testator that she should have such lands, or pecuniary or other provision thus devised or bequeathed in addition to her dower.

How she shall declare her election.

SECT. 102. Where a woman shall be entitled to make election, as provided in the last two sections, she shall be deemed to have elected to take such jointure, devise, or pecuniary or other provision, unless within one year after the decease of her husband, and after such jointure, devise, or pecuniary or other provision shall have come to her knowledge, she shall declare in writing, under her hand, and cause the same to be filed in the clerk's office of the court having jurisdiction of proceedings for the assignment of dower in such estate; or in case of a will, in the clerk's office of the court where probate of such will is required to be made, that she will take her dower in the estate of her late husband; or unless, within the time aforesaid, she shall demand her dower of the heirs, devisees, alienees, or assignees, of her said late husband, or shall institute proceedings for the recovery thereof.

Jointure, &c. may be forfeited as well as dower.

SECT. 103. Every jointure and pecuniary provision, in lieu of dower, shall be forfeited by the woman for whose benefit the same shall be made, in the same cases in which she should forfeit her dower; and upon such forfeiture, any estate so conveyed for jointure, and every pecuniary provision so made, shall immediately vest in the person, or his legal representatives, in whom they would have vested, if her interest therein had then been determined by her death.

If evicted, she may be endowed anew.

SECT. 104. If a woman is lawfully evicted of lands assigned her as dower, or settled upon her as jointure, or is deprived of the provision made for her by will or otherwise, in lieu of dower, she shall be endowed anew, in like manner as if such assignment, jointure, or other provision had not been made.

Her alienage not to affect her right to dower in certain cases.

SECT. 105. The alienage of any woman shall not bar her right to dower, if her husband was a citizen of the United States, or being an alien, he had complied with the laws of this state to entitle him to hold lands.

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Dower may be forfeited by waste, &c.

SECT. 106. If any tenant in dower shall commit or suffer any waste on the premises held in dower, she shall forfeit the place wasted, and also the amount of the damage done to the premises, to be recovered in an action of waste, by the person having the next immediate estate of freehold therein.

She shall maintain the houses, &c. and may take fuel, &c.

SECT. 107. All tenants in dower shall, during the continuance of such tenancy, maintain the houses and tenements, with the fences and appurtenances whereof they may be endowed, in as good repair as when the same may be delivered to them, but taking fuel necessary for her own use, and proper materials for the necessary repair of the buildings and fences thereon, from any wood or other lands of which she may be endowed, shall not be considered waste.

ARTICLE V.

Of the title to real estate by descent.

SECTION

108. How real estate shall descend.
109. Rules of descent in case of lineal descendants.
110. When the estate shall go to the kindred in the ascending line, and to collateral relatives.
111. How such kindred and relatives shall take the inheritance.
112. How the inheritance shall descend, when there are no such kindred or relatives as specified in the last section.
113. Cases in which the the estate shall go one half to the paternal, and one half to the maternal kindred.
114. Rules of descent in case of collateral relatives.
115. The last clause of the preceding section restricted.
116. Husband or wife may file a bill, &c., in the case provided for in the last section, &c.
117. Cases in which the widow may take as heir.
118. If the widow take as heir, how the remaining part shall descend.
119. Shall not take dower and as heir.
120. In what case she shall be presumed to have elected.
121. If she take as heir, she shall take subject to the debts, &c.
122. Illegitimate child the heir of its mother.

SECTION

123. Case in which illegitimate child shall be deemed legitimate.
124. The mother and her relatives to be heirs of illegitimate child.
125. Estate to escheat if no heirs.
126. The provisions of this article not to affect estates in dower and by the courtesy.
127. Alienism of ancestor not to affect citizen.
128. Posthumous children to inherit.
129. Degrees of kindred computed according to the civil law.
130. Sole and several heirs.
131. Terms "real estate," and "estate," and "inheritance" defined.
132. Construction of expressions describing persons living or dead, &c.
133. Meaning of expressions, "when the estate came to the intestate on the part of his father," &c., defined.
134. Advancements to be set off.
135. When advancement shall exclude the heir or be deducted, &c.
136. When the advancement has been in real or personal estate, how adjusted.
137. Evidence of the value of advancement.
138. Case of a child dying after advancement, leaving heirs, &c.
139. Maintaining child, &c., not to be deemed an advancement.

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ARTICLE 5.

SECT. 108. The real estate of every person dying intestate shall descend in the manner, and subject to the rules and provisions of this article. How real estate shall descend.

SECT. 109. The rules of descent, as applicable in the case of lineal descendants, shall be as follows: Rules of descent in case of lineal descendants.

1. When any intestate shall die, leaving children, and none of the children of such intestate shall have died, leaving descendants, such estate shall descend to the children of such intestate living at the time of his death, in equal proportions. Children.

2. The law of descent, as prescribed in the above first rule, shall apply in every case in which there are several descendants in the direct line of lineal descent, and all of equal degree of consanguinity to such intestate, whether children, grand children, or great grand children, or more remote descendants of such intestate; so that the inheritance shall descend to such persons of equal degree of consanguinity to the intestate in equal parts, however remote from the intestate such equal and common degree of consanguinity may be. Other lineal descendants of equal degree.

3. If any of the children of such intestate be living, and any be dead, the inheritance shall descend to the children of such intestate who are living, and to the descendants of such of his children as shall have died, so that each child of the intestate who shall be living, shall inherit the share which would have descended to him, if all the children of the intestate, who shall have died leaving descendants, had been living; and so that the descendants of each deceased child of the intestate shall inherit the share which their parent would have received if living. Children living and descendants of deceased children.

4. The rule of descent, as prescribed in the above third rule, shall apply in all cases in which the descendants of the intestate entitled to share in the estate, are of unequal degrees of consanguinity to the intestate; so that those who are of the nearest degree of consanguinity shall take the shares which would have descended to them had all the descendants in the same degree of consanguinity with themselves, who shall have died, leaving issue, been living; and so that the issue of the descendants who shall have died shall respectively take the shares which their parents, if living, would have received. Lineal descendants of unequal degrees.

SECT. 110. In case the intestate shall die without children or their descendants to take the inheritance, his estate shall go to his kindred in the direct ascending line of consanguinity and to his collateral relatives, as specified in the following sections of this article, subject to the provisions made in favor of the widow of such intestate; the inheritance, in all such cases, being governed by the rules of descent hereinafter established in this article. When estate shall go to kindred in the ascending line, and to collateral relatives. See post, sect. 114.

SECT. 111. If the intestate shall die without children or their descendants, and leaving a father and mother or either of them, and brothers and sisters or the descendants of any brother or sister, or leaving any of such relatives, the inheritance shall descend as follows:

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If there be a father, &c., and brothers, &c. See post, sect. 114.

1. If there be a father and mother or either of them, and brothers and sisters, or brothers and sisters and the descendants of any brother or sister who shall have died, or the descendants of any or all such brothers and sisters, all the brothers and sisters being dead, one half of the inheritance shall go to the father and mother as joint tenants, or if either be dead, then to the one who shall be living; and the other half of such inheritance shall go to the said brothers and sisters, or to such as shall be living, and the descendants of such as shall be dead; or if all such brothers and sisters be dead, then to their descendants.

When the estate shall go to the father and mother.

2. If there be neither brothers nor sisters of the intestate, nor the descendants of any such brother or sister, and the father and mother of such intestate be living, the whole of the inheritance shall go to such father and mother as joint tenants; if the father only be living he shall take the inheritance, unless the estate came to the intestate on the part of the mother; if the father be dead or incapable of inheriting the estate, it shall go to the mother of the intestate.

—to the brothers and sisters and their descendants. See post, sect. 114.

3. If there be neither father nor mother of such intestate, and there be brothers and sisters of such intestate; or brothers and sisters and the descendants of any brother or sister who shall have died; or only the descendants of brothers and sisters; then the whole of such inheritance shall go to such brothers and sisters and to the descendants of them, according to the rules of descent hereinafter prescribed in this article.

SECT. 112. If there be no descendants nor relatives entitled to take the inheritance according to the preceding sections of this article, such inheritance, (subject to the provisions hereinafrer made in favor of the widow of the intestate,) shall descend as follows:

When the estate shall go to the paternal grandfather and grandmother.

1. If the inheritance came to the intestate on the part of his father, it shall go to the paternal grandfather and grandmother as joint tenants; or if one of them be dead, then to the survivor.

—to the brothers and sisters of the father, &c.

2. If there be no grandfather nor grandmother as above specified, to take the inheritance, the same shall descend to the brothers and sisters of the father of the intestate; or to such as shall be living and the descendants of such as shall de dead; or if all the brothers and sisters be dead, then to their descendants.

—to the next of kin of equal degree.

3. If there be no descendants of such brothers and sisters of the intestate's father, nor other heirs entitled to take according to the preceding provisions of this section, the inheritance shall then go to the nearest of kin, of equal degree of consanguinity, to the intestate, among the paternal kindred.

If no heirs as above, then to the maternal kindred.

4. If there shall be no heirs entitled to take the inheritance as above provided, the same shall descend to the maternal kindred in like manner and be subject to the same law of descent, in all respects, as if such maternal kindred had been the paternal kindred of the intestate, as in this section before provided.

When the estate shall go to

5. Whenever the inheritance shall have come to the intestate on the part of his mother, the same shall go to the maternal

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grandfather and grandmother of the intestate, as joint tenants, or to the survivor of them; or if neither be alive, then to the brothers and sisters of the intestate's mother and to their descendants; or if there be no such brothers or sisters, nor the descendants of any of them, living, then to the nearest of kin, of equal degree of consaguinity to the intestate, among the maternal kindred; and such inheritance shall descend in like manner to the maternal kindred, and be governed in all respects by the law of descent as prescribed herein, as if the said maternal kindred were the paternal kindred of such intestate. the maternal kindred.

6. If there shall be no maternal relatives to take the inheritance coming to the intestate on the part of his mother, according to the provisions of this section, then such inheritance shall descend to the paternal kindred of the intestate in like manner, and be subject to the same law of descent, in all respects, as if said paternal kindred were the maternal kindred of said intestate, as in this section above specified. If no such kindred, then to the paternal kindred.

SECT. 113. Whenever the inheritance shall not have come to the intestate on the part of the father or mother, and there *shall not* be any children or their descendants of such intestate, nor any father, mother, or brothers and sisters, or the descendants of any such brother or sister of such intestate, such inheritance shall descend as follows: When the estate shall go one half to the paternal and one half to the maternal kindred.

1. One-half of the said inheritance shall go to the paternal grandfather and grandmother of such intestate, as joint tenants; or if one shall have died, then to the survivor. To the paternal grandfather and grandmother.

2. If there shall be neither paternal grandfather nor grandmother living, such half of the inheritance shall go to the brothers and sisters of the father of the intestate, and to the descendants of any of them who shall have died; or if all such brothers and sisters shall have died, any or all of them leaving descendants, then to such descendants. To the brothers and sisters of the father, &c.

3. If there be no relatives of the intestate entitled to the inheritance, as above provided in this section, then such half of said inheritance shall go to the nearest of kin, in equal degree of consanguinity to such intestate, among his paternal kindred. To the nearest of kin, &c.

4. If there be no paternal kindred entitled to such part of the inheritance as above specified, the same shall descend to the widow of the intestate, if living; or if there be no widow, then to the maternal kindred of such intestate in like manner, and governed in all respects as if such maternal kindred had been of the paternal kindred of such intestate. If no heirs as above, then to the widow; or if there be no widow, to the maternal kindred.

5. The other half of such inheritance, as above in this section specified, shall go to the maternal kindred of the intestate in like manner as is in this section provided for the half of such inheritance which goes to the paternal kindred, and shall, in all respects, be governed by the same rules of descent among such maternal kindred as if they had been the paternal kindred of the intestate as aforesaid. The other half to the maternal kindred.

6. If there be no maternal kindred entitled to such remaining half of the inheritance, the same shall descend to the widow of If no such heirs, then to

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the widow; or if no widow, to the paternal kindred.

the intestate, if living; or if there be no widow, then to the paternal kindred of the intestate in like manner, and governed in all respects as if such paternal kindred had been of the maternal kindred of the intestate.

Rules of descent when the estate goes to the collateral relatives.

SECT. 114. In all cases in which the inheritance shall descend, in whole or in part, to the collateral relatives of the intestate and their descendants, as specified in this article, such relatives shall share the inheritance as follows:

Kindred of equal degree.

1. If there be several relatives, all of equal degree of consanguinity to the intestate, such inheritance shall descend to them in equal parts, however remote from the intestate such equal and common degree of consanguinity may be.

Kindred of unequal degrees.

2. If the relatives entitled to the inheritance be of unequal degree of consanguinity to the intestate, such inheritance shall so descend that those of the nearest degree of consanguinity to such intestate shall take the shares that would have descended to them if all the relatives of the same degree of consanguinity to such intestate, who shall have died leaving descendants, were living; and so that the descendants of such deceased relatives shall inherit the shares which their parents, if living, would have received.

Nearest of kin.

3. Whenever the inheritance is, in any case, directed to go to the nearest of kin in equal degree of consanguinity to the intestate, and there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the ancestor nearest to the intestate shall be preferred to those claiming through an ancestor who is more remote.

Kindred of half blood.

4. Kindred of the half blood, and their descendants, shall inherit equally with those of the whole blood in equal degree of consanguinity to the intestate; unless the inheritance shall have come to the intestate by descent, devise, or gift of some of his ancestors; in which case such kindred of the half blood and their descendants shall not inherit, except they also be of the blood of such ancestor; but if in any such case there be no relatives of the whole blood, in equal or nearer degree of consanguinity to such intestate, nor their descendants, entitled to take such inheritance according to the provisions of this article, then such kindred of the intestate, of the half blood, and their descendants, shall take the same as if they were of the whole blood.

In case the estate came by gift, &c.

5. Whenever the inheritance shall have come to the intestate by gift, or by virtue of any conveyance in consideration of natural love and affection, from any person living at the death of such intestate, such inheritance shall descend to such person, if the intestate shall have died without leaving any children or their descendants.

Restriction on the last clause.

SECT. 115. When in any case specified in the last clause of the last preceding section, the husband, or wife, of any person to whom any such estate may have been given or conveyed, shall have made valuable and lasting improvements thereon, or the separate estate or moneys of such husband, or wife, shall have

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been applied to the making of such improvements, such husband or wife, as the case may be, when such estate shall descend to the grantor or donor thereof, as provided in the said last clause, shall hold a lien thereon for the payment of such improvements, or for reimbursement for his or her moneys invested therein, deducting therefrom the value of the use and enjoyment of such premises by the person in whose favor such lien is declared.

Husband or wife may file a bill, &c.

SECT. 116. Such husband or wife may file a bill in chancery against the person to whom such estate is above directed to descend; and the court may decree the payment or reimbursement out of such premises or otherwise, to such husband or wife, of the value of such improvements, or the sums of money invested therein; and no conveyance of such premises or incumbrance made thereon, by the person aforesaid, shall in any way affect or defeat the lien of such husband or wife.

The widow may take as heir.

SECT. 117. The widow of the intestate may, if she choose, take as an heir of her husband, to the extent and in the cases specified in this section, as follows:

May take one third.

1. If the heirs entitled to take such inheritance shall be the grandfather and the grandmother of the intestate, or either of them, or the brothers and sisters of the father or mother of the intestate, or the descendants of any such brother or sister, the widow may, in any such case, take one-third part of such inheritance, as an heir of the intestate.

May take one half.

2. If the only heirs entitled to take the inheritance shall be such as are included within any of the provisions of this article, by virtue of which they take as being designated to be nearest of kin in equal degree of consanguinity to the intestate, the widow of the intestate may, in any such case, take one equal half of such inheritance, as an heir of the intestate.

May take the whole.

3. If there be no heirs of the intestate entitled to take such inheritance, as prescribed in this article, such widow may take the whole thereof, as the heir of said intestate.

If the widow take as heir, how the remaining part shall go.

SECT. 118. Whenever the widow of the intestate shall take as heir, as above specified, any part of such inheritance, the remaining part thereof, if any, shall go to the lawful heirs of the intestate, entitled thereto, in like manner as if such remaining part were the whole of such inheritance.

Shall not take as heir and dower also.

SECT. 119. Whenever the widow shall take as heir of the intestate, she shall not be endowed of the residue of such inheritance; but instead of taking as such heir she may elect to take her dower in such estate; in which case she shall not take any part thereof as such heir.

She shall elect

SECT. 120. Such widow shall be presumed to have elected to take her dower in such inheritance, unless within one year after the death of such intestate shall be known to her, she shall have declared her intention, in writing, filed in the clerk's office of the probate court of the county in which such inheritance may be situated, to take as the heir as aforesaid of such intestate.

If she take as heir, shall take subject to debts, &c.

SECT. 121. If she take as heir she shall take such inheritance subject to the debts, liabilities, liens, and judgments against the

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intestate and his estate, and the costs and charges of administration thereof, as other heirs in like cases.

Illegitimate child, heir of his mother.

SECT. 122. Every illegitimate child shall be considered as an heir of his mother, and shall inherit her estate, in whole or in part, as the case may be, in like manner as if he had been born in lawful wedlock.

Case in which illegitimate child shall be deemed legitimate.

SECT. 123. If any man shall marry a woman who has, previous to the marriage, borne any illegitimate child, and after marriage shall acknowledge such child as his own, such child shall be deemed legitimate to all intents and purposes.

Mother and her relatives heirs of illegitimate child.

SECT. 124. If any illegitimate child shall die intestate, without having been acknowledged, as provided in the last preceding section, and without descendants lawfully entitled to inherit his estate, the same shall descend to his mother; or if she be dead, it shall descend to the children, or their descendants, of such mother; and if there be no such children nor their descendants, then to the other relatives of the intestate, on the part of the mother, as if such intestate had been legitimate.

Estate to escheat, if no heirs.

SECT. 125. If any person, dying intestate, shall leave no heirs or kindred, entitled to the inheritance according to the provisions of this article, his estate shall escheat to the state of Indiana, to be applied exclusively to the support of common schools of the several townships of the county or counties in which such estate may be situated, in such manner as may be directed by law.

This article not to affect tenant in dower, &c.

SECT. 126. The estate of a husband, as a tenant by the courtesy, or of a widow, as tenant in dower, shall not be affected by any of the provisions of this article, except the widow's right to dower, when she shall succeed to the whole or any part of the inheritance, as the heir of her husband; nor shall the same affect the limitation of any estate by deed or will.

Alienism of ancestor not to affect citizen.

SECT. 127. No person, who is himself a citizen, or capable of inheriting, shall be precluded from the inheritance by reason of the alienism of any of his ancestors.

Posthumous children to inherit.

SECT. 128. Descendants and relatives of the intestate begotten before his death, but born thereafter, shall, in all cases, inherit in the same manner as if they had been born in the lifetime of the intestate, and had survived him.

Civil law.

SECT. 129. The degrees of kindred shall be computed according to the rules of the civil law.

Sole and several heirs.

SECT. 130. Whenever there is but one person in any case entitled to inherit, he or she shall take and hold the inheritance solely; and whenever an inheritance, or a share of an inheritance, shall descend to several persons, they shall take as tenants in common, in proportion to their respective rights, except where it is otherwise prescribed in this article.

Terms "real estate," and "estate" defined.

SECT. 131. The terms "real estate," or "estate," as used in the preceding sections of this article, shall be construed to include every estate, interest, and right, legal and equitable, in lands, tenements, and hereditaments, except such as are determined or extinguished by the death of an intestate, seized or

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possessed thereof, or in any manner entitled thereto, and except leases for a term of years: and the the term "inheritance," as used in this article, shall be understood to mean real estate, as thus defined, descendable according to the provisions of this article. ARTICLE 5. "Inheritance" defined.

SECT. 132. Whenever in this article any person is described as living, it shall be understood to mean that he or she was living at the time of the death of the intestate from whom the inheritance descended; and whenever any person is described as having died, it shall be understood to mean that he or she died before such intestate. Construction of expressions describing persons living or dead, &c.

SECT. 133. The expressions used in this article, "where the estate came to the intestate on the part of the father," or "mother," as the case may be, shall be construed to include every case where the inheritance shall have come to the intestate by devise, gift, or descent from the parent referred to, or from any relative of the blood of such parent; and the word "issue," whenever used in this chapter, includes any or all of the lawful lineal descendants of the ancestor. Meaning of other expressions.

SECT. 134. Any estate, real or personal, that may have been given by any deceased person in his lifetime, as an advancement to any child, or other lineal descendant, shall be considered as a part of the estate of the deceased, so far as it regards the division and distribution thereof among his children, or their descendants, and shall be taken by such child or descendant towards his share of the estate of the deceased. Advancements to be set-off.

SECT. 135. If the amount of such advancement shall be equal to, or exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate; but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the intestate. When advancement shall exclude the heir, &c.

SECT. 136. If any such advancement shall be made in real estate, the value thereof shall, for the purposes of the last preceding section, be considered as a part of the real estate to be divided; and if it be in money, or other personal estate, it shall be considered as a part of the personal estate to be distributed; and if in either case it shall exceed the share of real or personal estate that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate of the deceased as will make his whole share equal, as near as can be estimated, to those of the other heirs who are in the same degree with him. When advancement has been in real or personal estate.

SECT. 137. If the value of the estate, real or personal, so advanced, shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the receipt in writing given by the party receiving such advancement from the intestate, it shall be considered as of that value, in the division and distribution of the estate; otherwise it shall be estimated according to its value when given. Evidence of value of advancement.

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Case of a child dying after advancement.

SECT. 138. If any child, or other lineal descendant, so advanced shall die before the person making such advancement, leaving descendants or other heirs, such advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

Maintaining a child, &c. not advancement.

SECT. 139. The maintaining or educating, or the giving of money to a child, without any view to a portion or settlement in life, shall not be deemed an advancement.

ARTICLE VI.

Of tenant by the courtesy; estates at will and for years; and some general provisions respecting the liabilities of lessors, lessees, their assignees, and the recovery of rents, and also respecting easements.

SECTION

140. Tenant by the courtesy.
141. Courtesy when barred.
142. Estates at will, how determined.
143. Tenancies from year to year.
144. Tenancies from year to year, how determined.
145. Determined by a failure to pay rent, &c.
146. Attornment of a tenant not necessary, &c.
147. When attornment of the tenant to be valid, &c.
148. Interesse termini may be disposed of &c. as a term in possession.
149. Effect of new lease after surrender of former lease.
150. Tenant of part of demised lands liable for proportion of the rent.
151. Remedies of lessees, &c. against lessors, &c.
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153. Remedy to recover rent on a lease for life.
154. Rents dependent on the life of another.
155. Executors, &c. may have action for rent.
156. Actions by and against executors and administrators for rent.
157. Action for use and occupation.
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159. The right of way, air, &c. not acquired by a shorter use than twenty years.
160. The owner may give notice that he disputes the right, &c.
161. The notice to prevent the acquiring of such right.
162. Such notice, and the service thereof, to be recorded.
163. Guardian may give such notice.
164. The effect of giving and recording such notice.

Tenant by the courtesy.

SECT. 140. When any man and his wife shall be seized, in her right, of any estate of inheritance in lands, and shall have issue, born alive, which might inherit the same, the husband shall, on the death of his wife, hold the lands for his life, as tenant thereof by the courtesy.

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SECT. 141. If the husband shall abandon his wife without just cause, and live apart from her, he shall be barred of his right of taking as tenant by the courtesy; but if his wife become reconciled to him, and voluntarily live with him, he shall be restored to his right as such tenant. Courtesy when barred.

SECT. 142. All estates at will may be determined by three months' notice in writing, given for that purpose, to the other party; and when the rent reserved in such lease is payable at periods of less than three months, the time of such notice shall be sufficient, if it be equal to the interval between the days of payment; and in all cases of a neglect or refusal to pay the rent due on a lease at will, ten days' notice to quit, given in writing, by the landlord to the tenant, shall be sufficient to determine the lease. Estates at will, how determined.

SECT. 143. A tenancy at will cannot arise or be created without an express contract or grant; and all general tenancies, in which the premises are occupied by the consent, either expressly or constructively, of the landlord, shall be deemed and taken to be tenancies from year to year. Tenancies from year to year.

SECT. 144. All tenancies from year to year may be determined by at least three months' notice given to the other party, prior to the expiration of the year; and in all tenancies which, by the agreement of the parties, express or implied, are from one period to another of less than three months' duration, the time of such notice shall be sufficient, if it be equal to the interval between such periods. Tenancies from year to year, how determined.

SECT. 145. But if in any of the cases specified in the last preceding section, the rent is due and payable, at the end of the year, or at any other period at which the lease or estate may be determined by the requisite previous notice, and such rent shall not be paid when thus due, such lease or estate may immediately be determined, by ten days' notice in writing, unless such rent is paid before the expiration of said ten days. Determined by failure to pay rent, &c.

SECT. 146. Where any lands or tenements shall be occupied by a tenant, a conveyance thereof, or of the rents and profits, or of any other interest therein, by the landlord of such tenant, shall be valid, without any attornment of such tenant; but the payment of rent to such grantor by said tenant before notice of the conveyance, shall be binding upon such grantee, and such tenant shall not be liable to such grantee for any breach of the conditions of the demise, until he shall have had notice of such conveyance. Attornment not necessary, &c.—payment of rent, &c. before notice.

SECT. 147. The attornment of a tenant to a stranger shall be absolutely void, and shall not in anywise affect the possession of his landlord, unless it be made, When attornment to a stranger to be valid, &c.

1. With the consent of the landlord; or,

2. Pursuant to or in consequence of a judgment at law, or the order or decree of a court of equity; or,

3. To a mortgagee, after the mortgage has become forfeited.

SECT. 148. Where there is a right to the possession of a term at a future time, such interesse termini may be disposed of, as- Interesse termini may be disposed of, &c.

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signed, granted, or surrendered, and also enlarged, by a release, in like manner as if the same were a term in possession.

4 Kent, 97, and note *a*.

Effect of new lease after surrender of former lease.

4 Kent, 104, 105.

SECT. 149. If any lease be surrendered, in order to be renewed, and a new lease be made by the chief landlord, such new lease shall be good and valid to all intents and purposes, without a surrender of all or any of the under leases, derived out of such original lease, so surrendered; and such landlord, his lessee, and the holders of such under leases, shall enjoy all their rights and interests, in the same manner, and to the same extent, as if the original lease had been still continued, and such landlord shall have the same remedy for the rents, secured by such new lease, so far as the same do not exceed the rents and duties reserved in the case of the original lease, so surrendered.

Tenant of part of demised lands liable for proportion of the rent.

SECT. 150. Every person in possession of land, out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, to the chief landlord, although it be only a part of the land or interest which was originally demised.

Remedies of lessees, &c. against lessor &c.

SECT. 151. The lessees of any lands, their assigns, or personal representatives, shall have the same remedy, by action or otherwise, against the lessor, his alienees, grantees, assignees, or his or their representatives, for the breach of any covenant or agreement in such lease contained, as such lessee might have had against his immediate lessor.

Remedies of alienees, &c. of demised lands, &c.

SECT. 152. The alienees or grantees of any demised lands, tenements, rents, or other hereditaments, or of the reversion thereof, and the assignee of the lessor of any demise, and the heirs and personal representatives of such alienee, grantee, or assignee, shall have the same remedies, by action or otherwise, for the non-performance of any agreement contained in the lease so assigned, or for the recovery of any rent, or for the doing of any waste, or other cause of forfeiture, as their alienor, grantor, or lessor, had or might have had, if such estate, interest, or reversion, had remained in such alienor, grantor, or lessor.

Rent due on a lease for life.

SECT. 153. Any person having any rent due upon any lease for life or lives, may have the same remedies to recover such arrears as if such lease were for years.

Rents dependant on the life of another.

SECT. 154. Every person entitled to any rents, dependent upon the life of any other, may, notwithstanding the death of such other person, have the same remedy, by action or by distress, for the recovery of all arrears that may be behind and unpaid at the death of such other person, as he might have had if such person were in full life.

Executors, &c. may have action for rent.

SECT. 155. The executors or administrators of any person to whom any rent shall have been due and unpaid at the time of his death, may have the same remedy, by action or by distress, for the recovery of all such arrears, that their testator or intestate might have had if living.

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ARTICLE 6.

Actions by and against executors and administrators for rent.

SECT. 156. Any action authorized for the recovery of rent may be brought by and against executors and administrators, for any arrears of rent, accrued in the lifetime of the deceased parties, respectively, in the same manner as for debts due from or to the same parties in their lifetime, on any personal contract.

Action for use and occupation

SECT. 157. Any person entitled thereto may recover, in an action of assumpsit, a reasonable satisfaction for the use and occupation of any lands or tenements, from any person who has used and occupied the same, whenever the amount of rent has not been specified by any contract or agreement.

This article not to affect other remedies, &c.

SECT. 158. Nothing contained in this article shall deprive any person entitled to rent, of any other legal remedy for the recovery of his rents, whether secured by lease, or provided by law.

Right of way, air, &c. not acquired by a shorter use than twenty years.

SECT. 159. No person shall acquire any right or privilege of way, air, or light, nor any other easement, from, in, upon, or over the land of another, by the adverse use or enjoyment thereof, unless such use shall have been continued uninterruptedly for twenty years.

The owner may give notice.

SECT. 160. The person owning the land may give notice to the person or persons claiming or using the privilege, in any such case, that he does dispute the right of way, air, light, or other easement.

Notice to prevent the acquiring of such right.

SECT. 161. Such notice shall be in writing, and shall be served in the same manner as a summons in a civil action commenced in the circuit court, on the other party, if he can be found within the state; or if he cannot be found, then such service shall be on his agent or guardian; or if the same cannot be thus served, then a copy thereof shall be posted up by the officer into whose hands the same shall have come, for the space of ten days, in some conspicuous place on or adjoining the premises, way, or place disputed.

Such notice and service thereof to be recorded.

SECT. 162. Such service or notice shall be endorsed by the officer serving or giving the same, on the original paper, and returned to the party giving such notice, who shall cause such original paper and endorsement of service or notice, to be recorded in the recorder's office of the county where the land lies respecting which such right of way, air, light, or other easement is disputed.

Guardian may give such notice.

SECT. 163. Every such notice, given by the guardian or agent of the owner of the land, shall have the like effect as if given by himself.

The effect of such notice.

SECT. 164. Every such notice thus served and recorded, shall be deemed an interruption of such use, from the time such notice was served, and shall prevent the acquiring of a right thereto by the continuance of the use thereof, for any length of time whatever, after the notice as aforesaid.

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ARTICLE VII.

Of trusts, trustees, and powers.

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ARTICLE 7.

Creation of trust to be in writing, except, &c.

SECT. 165. No trust concerning lands, except such as may arise or result by implication or construction of law, or which may be transferred or extinguished by act or operation of law, shall be created or declared, unless by an instrument in writing, signed by the party creating or declaring the same, or by his attorney, thereto lawfully authorized in writing.

Trust not to defeat title of purchaser without notice, &c.

SECT. 166. No such trust, whether implied by law, or created or declared by the parties, shall defeat the title of a purchaser for a valuable consideration and without notice of the trust, nor prevent any creditor who has no notice of the trust, from attaching the premises, or taking them in execution, in like manner as if no such trust had existed.

Recording the instrument to be notice of the trust.

SECT. 167. When a trust is created or declared by any such instrument in writing, the recording thereof in the record of deeds for the county where the lands lie, shall be deemed equivalent to actual notice thereof to every person claiming under a conveyance made, or lien created, after such recording.

When the person beneficially interested cannot assign his interest in such trust. 2 Kent, 170. Note *b*.

SECT. 168. No person, beneficially interested in a trust for the receipt of the rents and profits of lands, can assign or in any manner dispose of such interest, unless the right to make an assignment or disposition thereof is conferred by the instrument creating such trust; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created, shall be assignable.

Certain sales by trustees, void.

SECT. 169. Where a valid trust shall be expressed in the instrument creating the estate, every sale, conveyance, or other act of the trustee, in contravention of the trust, shall be absolutely void.

Conveyance to one, for money paid by another no trust to result. 4 Kent, 309.

SECT. 170. Where a conveyance, for a valuable consideration, shall be made to one person, and the consideration therefor shall be paid by another, no use or trust shall result in favor of the person by whom such payment shall have been made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next two sections.

Except for the benefit of creditors. 4 Kent, 309. Note *a*.

SECT. 171. Every such conveyance shall be presumed fraudulent, as against the prior and subsequent creditors of the person paying the consideration therefor; and where a fraudulent intent is not disproved, a trust shall result in favor of such prior creditors to the extent that may be necessary to satisfy their demands; and a trust shall also result in favor of

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subsequent creditors if there shall be shown a sufficient ground to infer a fraudulent intent.

Section 170 qualified.

SECT. 172. The provisions of the section next before the last preceding section, shall not extend to cases where the alienee named in the conveyance shall have taken the same as an absolute conveyance in his own name, without the consent or knowledge of the person with whose money the consideration therefor was paid; or where such alienee, in violation of some trust, shall have purchased the land so conveyed with moneys belonging to some other person.

Purchaser protected. 4 Kent, 309. Note a.

SECT. 173. No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchaser for a valuable consideration, and without notice of such trust.

Persons paying moneys to trustees in good faith protected.

SECT. 174. No person who shall actually and in good faith pay a sum of money to a trustee, which the trustee, as such, is authorized to receive, shall be responsible for the proper application of such money, by such trustee, according to the trust; nor shall any right or title, derived by him from such trustee, in consideration of such payment, be impeached or called in question in consequence of any misapplication by the trustee of the moneys thus paid.

Trust estate not to descend to heirs of trustee, &c.

SECT. 175. Upon the death of a sole or surviving trustee of an express trust, the trust estate shall not descend to his heirs nor pass to his personal representatives; but the trust, if then unexecuted, shall vest in the court of chancery having jurisdiction thereof, with all the powers and duties of the original trustee, and shall be executed by some person appointed for that purpose under the direction of the court.

Trust to vest in chancery &c.

When and how a trustee may resign.

SECT. 176. Upon the petition of any trustee of an express trust, a court of chancery having jurisdiction may accept his resignation, and discharge him from the trust, under such regulations, and upon such terms, as the rights and interests of the persons interested in the execution or performance of the trust may require.

When and how trustees may be removed.

SECT. 177. In all cases of express trusts, the courts of this state, sitting in chancery and having jurisdiction of the subject matter of the trust, shall have full power to remove any trustee who shall have violated, or shall be attempting to violate, his trust; or who shall be insolvent; or of whose insolvency, or of the insolvency of his sureties, if he shall have become bound with sureties, there shall be reasonable cause of apprehension; or who, from any other valid cause, shall be deemed an unsuitable person to execute the trust.

How place of trustee supplied.

SECT. 178. Such court shall have full power to appoint a new trustee in place of a trustee resigned or removed; and where, in consequence of such resignation or removal, there shall be no acting trustee, the court, in its discretion, may appoint new trustees, or cause such trust to be executed by a master in chancery, or any other of its officers, under its direction.

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Removal of trustee to be on bill or petition.

SECT. 179. The removal of any trustee, as aforesaid, shall be on the petition or bill of any person interested in the execution of the trust, filed in the proper court, and the court may proceed in the hearing and determination thereof, under such rules and regulations as may be consistent with the practice of the court and the right and equity of the case.

Conveyances by deed of bargain and sale, &c. to stand seized, &c. 4 Kent 496, note *a*.

SECT. 180. Conveyances by deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to the use of another, or by deed operating by way of covenant, to stand seized to the use of another, shall, in all cases, be deemed and held to transfer the possession of the bargainer, releaser, or covenanter, to the bargainee, releasee, or other person entitled to the use of the estate, or to the beneficial interest in the use, as perfectly and completely as if such bargainee, releasee, or person entitled to the use or beneficial interest in the use, had been enfeoffed with livery of seizin of the land intended to be conveyed by such deed or covenant.

When no estate to vest in trustees. 4 Kent 308,309.

SECT. 181. Every disposition of lands, whether by deed, devise, or otherwise, shall be directly to the person in whom the right to the possession and profits shall be intended to be invested, and not to any other, to the use of, or in trust for, such person; and if made to one or more persons, to the use of, or in trust for, another, no estate or interest, legal or equitable, shall vest in the trustee, except as provided in the one hundred and eighty-third section of this chapter.

Right to possession of lands, &c. creates legal ownership. 4 Kent 308,309.

SECT. 182. Every person who, by virtue of any deed, conveyance, assignment, or devise, shall hereafter be entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest.

The two preceding sections qualified. 4 Kent 308,309.

SECT. 183. The last two preceding sections shall not divest the estate of any trustees in any trust, when the title of such trustees is not merely nominal or formal, but is connected with some power of actual disposition or management in relation to the lands which are the subject of the trust.

When a power of disposition shall be deemed absolute. 4 Kent 349.

SECT. 184. Every power of disposition shall be deemed absolute, by means of which the donee of such power is enabled in his life time to dispose of the entire fee for his own benefit.

Power of revocation reserved to grantor; he shall be deemed the absolute owner. 4 Kent 337,349.

SECT. 185. When the grantor, in any conveyance, shall reserve to himself, for his own benefit, an absolute power of revocation, such grantor shall still be deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers shall be concerned.

Estate of tenant for life, &c., when changed into a fee. 4 Kent 320, 337, 349.

SECT. 186. When an absolute power of disposition, not accompanied by any trust, shall be given to the owner of a particular estate, for life or for years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers, but subject to any future estates limited thereon, in case the power should not be executed, or the lands should not

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be sold for the satisfaction of debts during the continuance of such particular estate.

Certain powers create a fee.

SECT. 187. When a like power of disposition shall be given to any person to whom no particular estate is limited, such person shall also take a fee subject to any future estates that may be limited thereon, but absolute in respect to creditors and purchasers.

When absolute power of alienation vests an absolute fee.

SECT. 188. In all cases where such absolute power of disposition is given, not accompanied by any trust, and no remainder is limited on the estate of the donee of the power, he shall be entitled to an absolute fee.

Effect of a power to devise in certain cases.

SECT. 189. When a general and beneficial power to devise the inheritance shall be given to a tenant for life, or years, such tenant shall be deemed to possess an abolute power of disposition, within the meaning and subject to the provisions of the last three preceding sections.

Effect of a reservation of a power in a conveyance. 4 Kent 337.

SECT. 190. The grantor, in any conveyance, may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another, and every power thus reserved shall be subject to the same provisions and restrictions of law, in like manner as if granted to another, as to creditors and purchasers, and otherwise.

Power of a tenant for life to make leases, how far assignable. 4 Kent 348, note *a*.

SECT. 191. The power of a tenant for life to make leases shall not be assignable as a separate interest, but shall be annexed to his estate, and will pass, unless specially excepted, by any conveyance of such estate: if specially excepted in any such conveyance, it shall be deemed extinguished.

How such power may be released. 4 Kent 348, note *a*.

SECT. 192. Such power may be released by the tenant for life to any person entitled to an expectant estate in the lands, and shall thereupon be extinguished.

Mortgage by tenant for life. 4 Kent 348, note *a*.

SECT. 193. But a mortgage executed by a tenant for life, having a power to make leases, or by a married woman by virtue of any beneficial power, shall not extinguish or suspend the power, but the power shall be bound by the mortgage in the same manner as the lands embraced therein.

The effect of such mortgage.

SECT. 194. The effects of such a lien, by mortgage on the power, shall be,

1. That the mortgagee is entitled in equity to an execution of the power, so far as the satisfaction of his debt may require.

Subsequent estate subject.

2. That any subsequent estate, created by the owner in the execution of the power, becomes subject to the mortgage in the same manner as if in terms embraced therein.

Certain dispositions not void.

SECT. 195. No disposition, by virtue of a power, shall be void in law or in equity, on the ground that it is more extensive than was authorized by the power: but every estate or interest so created, so far as embraced by the terms of the power, shall be valid.

How a power is to be executed. 4 Kent 332, 337.

SECT. 196. No power of disposing of real estate can be executed, except by some instrument in writing, which would be sufficient in law to pass the estate or interest intended to

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pass under such power, if the person executing the power were the actual owner.

What instruments in execution of a power shall be recorded. 4 Kent, 332.

SECT. 197. Every instrument, except a will, in execution of such power, although the power shall be a power of revocation only, shall be deemed a conveyance within the provisions of the second article of this chapter, requiring conveyances to be recorded.

When the power must be executed by a will.

SECT. 198. When a power to dispose of lands is confined to a disposition by devise or will, the instrument of execution must be a will duly executed.

When a power must be executed by deed, &c. 4 Kent, 332.

SECT. 199. When a power is confined to a disposition by deed, or other conveyance, impliedly or expressly excluding its execution by will, such power cannot be executed by will, although the disposition is not intended to take effect, until after the death of the party executing the power.

When a power shall not be void. 4 Kent, 332.

SECT. 200. Where the donor of a power shall have directed or authorized it to be executed by an instrument not sufficient in law to pass the estate, the power shall not be void, but may be executed by an instrument, such as is required by the provisions of this article.

What formalities need not be observed. 4 Kent, 332, and note *b*.

SECT. 201. Where the donor of a power shall have directed any formalities to be observed in the execution of a power, in addition to those which would be sufficient in law to pass the estate, the observance of such additional formalities shall not be necessary to a valid execution of such power.

Conditions merely nominal disregarded. 4 Kent, 332.

SECT. 202. Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom or in whose favor they are to be performed, they may be wholly disregarded in the execution of the power.

Intentions of the donor to be observed, &c. 4 Kent, 332.

SECT. 203. With the exceptions contained in this article, the intentions of a donor of a power as to the mode, time, and conditions of its execution, shall be observed, subject to the power of a court of chancery to supply a defective execution of such power.

How consent of third person shall be signified.

SECT. 204. When the consent of a third person to the execution of a power is requisite, such consent shall be expressed in the instrument by which the power is executed, or shall be certified in writing thereon: in the first case, the instrument, and in the second case, the certificate, shall be signed by the party whose consent is required; and to entitle the instrument to be recorded, such signatures must be duly proved or acknowledged, in the same manner as when subscribed to a conveyance of land.

Power to a tenant for life. 4 Kent, 348, 108, and note.

SECT. 205. A special and beneficial power may be given to a tenant for life, of the lands embraced in the power, to make leases for not more than twenty-one years, and to commence in possession, during his life.

Power to a married woman.

SECT. 206. A general and beneficial power may be given to a married woman, to dispose by grant, conveyance, or devise, during the marriage, and without the concurrence of her husband, of lands conveyed or devised to her in fee.

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In whom powers may be vested, and by whom exercised. 4 Kent, 324, 325.

SECT. 207. A power may be vested in any person capable in law of holding, but cannot be exercised by any person not capable of aliening lands, except in the case of a married woman, who may execute during her marriage, a power, without the concurrence of her husband, as provided in the last preceding section, unless by the terms of the power, its execution by her during marriage is expressly or impliedly prohibited; but no power vested in a married woman during her infancy can be exercised by her until she attain her full age.

A married woman may create same estate as if unmarried, under a power.

SECT. 208. When a married woman entitled to an estate in fee, shall be authorized by a power to dispose of such estate during her marriage, she may, by virtue of such power, create any estate, which she might create if unmarried.

Instrument in execution of a power by a married woman, how acknowledged.

SECT. 209. If a married woman execute, under a power, any instrument which by law is required to be acknowledged before the same can be recorded, such instrument shall not be a valid execution of the power, unless it shall be acknowledged by her on a private examination, as prescribed in relation to the acknowledgment of conveyances by married women.

Construction of certain powers. 4 Kent, 343.

SECT. 210. Where a disposition under a power is directed to be made to, or among, or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion.

Appointment, &c. not impeachable in certain cases. 4 Kent, 343, and 344. Note a.

SECT. 211. But when the terms of the power import that the estate or fund is to be distributed between the persons so designated, in such manner or proportions as the trustee of the power may think proper, the distribution or appointment made by such trustee shall not be impeached in any court on the ground that it is unsubstantial, illusory, or nominal.

When chancery to execute the power. 4 Kent, 342.

SECT. 212. If the trustee of a power, with the right of selection, shall die, leaving the power unexecuted, its execution shall be decreed in equity, for the benefit equally of all the persons designated as objects of the trust.

When power may be exercised in favor of grand children. 4 Kent, 346.

SECT. 213. Where a disposition or appointment under a power is directed to be made to or among the children of any person, without restricting it to any particular children, such power may be exercised in favor of the grandchildren, or other descendants of such person.

When powers irrevocable. 4 Kent, 337.

SECT. 214. Every power, beneficial or in trust, shall be irrevocable, unless an authority to revoke it is contained or reserved in the instrument creating the power.

Who must unite in execution of powers. 4 Kent, 326.

SECT. 215. Where a power is vested in several persons, all must unite in its execution, except as is provided in the next section; but if, previous to such execution, one or more of such persons shall die, the power in all cases, may be executed by the survivor or survivors of them.

Exercise of powers by surviving executors, &c.

SECT. 216. The survivor or survivors of several executors, with a devise to them by a will legally executed, of lands to sell, or where a naked power to sell is given to them by such will, and also the acting executor or executors, where any one or more executors appointed by any such will resigns, refuses

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to act as an executor, or is superseded or removed by a court of competent authority, and also an administrator with the will annexed, shall have the same interest and power in and over said lands, for the purpose of making sale thereof, as all such executors named in such will might have had; and any sales made, and conveyances, grants, and transfers of such lands, executed by such surviving or acting executor, or administrator with the will annexed, shall be equally valid as if made or executed by all said executors.

4 Kent, 326, 327. Note *b*.

SECT. 217. Where a power to sell lands shall be given to the grantee in any mortgage, or other conveyance intended to secure the payment of money, the power shall be deemed a part of the security, and shall vest in and may be executed by any person who, by assignment or otherwise, shall become entitled to the money so secured to be paid.

Power in a mortgage, part of the security, and assignable therewith. See ch. 29, art. 2, sect. 51 to 67 inclusive.

SECT. 218. Every special and beneficial power shall be liable in equity to the claims of creditors, in the same manner as other interests that cannot be reached by an execution at law; and the execution of the power may be decreed for the benefit of the creditors entitled.

Certain powers liable to claims of creditors.

SECT. 219. The execution, in whole or in part, of any trust power may be decreed in equity, for the benefit of the creditors or assignees of any person entitled, as an appointee of the trust, to compel its execution, when the interest of such appointee in such trust is assignable.

Execution of a trust power may be decreed in favor of creditors. 4 Kent, 342, 343, 341.

SECT. 220. Every beneficial power, and the interest of every person entitled to compel the execution of a trust power, shall pass to the assignees of the estate and effects of the person in whom such power is vested, under any assignment authorized by the provisions of the laws of this state respecting insolvent debtors.

Beneficial power, &c. shall pass to assignees of insolvent debtors 4 Kent. 341, 342, 343.

SECT. 221. Every power shall be a lien or charge upon the lands which it embraces, as against creditors and purchasers in good faith, and without actual notice of or from any person having an estate in such lands, only from the time the instrument containing such power shall be duly recorded in the proper recorder's office; as against all other persons, the power shall be a lien from the time the instrument in which it is contained shall take effect.

How far a power shall be a lien.

SECT. 222. Instruments, in execution of a power, shall be affected by fraud, both in law and equity, in the same manner as conveyances by owners or trustees.

Fraud

SECT. 223. The provisions of this article relating to powers, shall not extend to a simple power of attorney to convey lands in the name and for the benefit of the owner.

Provisions not applicable to power of attorney.

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ARTICLE VIII.

Miscellaneous provisions.

SECTION
224. Damages recoverable against certain persons holding over.
225. Remedies of reversioners.
226. Remedies of joint tenants against their co-tenants.
227. Remedies of joint tenant against co-tenant for improvements in certain cases
228. Terms "real estate" and "lands" defined.
229. The expressions "purchaser without notice," &c., defined.

Damages recoverable against certain persons holding over.

SECT. 224. Every person who, as guardian, and every husband seized in right of his wife only, and every other person having any estate determinable upon any life or lives, who, after the determination of such particular estate, without the express consent of the party immediately entitled after such determination, shall hold over and continue in possession of any lands, tenements, or hereditaments, shall be adjudged a trespasser; and every person, and his executors and administrators, who shall be entitled to such lands, tenements, or hereditaments, upon the determination of any such particular estate, may recover in damages against every such person so holding over, and against his, her, or their executors or administrators, the full value of the profits received during such wrongful detention.

Remedies of reversioners, &c.

SECT. 225. A person seized of an estate in remainder or reversion, may maintain an action of waste or trespass for any injury done to the inheritance, notwithstanding any intervening estate for life or years.

Remedies of joint tenants, &c.
4 Kent, 369.

SECT. 226. One joint tenant, or tenant in common, and his executors or administrators, may maintain an action of account or for money had and received against his co-tenant or co-tenants, or their executors or adminstrators, for receiving more than his or their just proportion.

Remedy of joint tenant, &c., against co-tenant for improvements in certain cases.

SECT. 227. When one joint tenant or tenant in common, having, by consent, the management of the estate, makes useful or necessary improvements thereon, and his co-tenant or co-tenants having knowledge thereof, make no objections thereto, such co-tenant or co-tenants shall contribute rateably towards the expenses thus incurred.

Terms "real" estate" and 'lands' defined

SECT. 228. The terms "real estate" and "lands" as used in this chapter, shall be construed as co-extensive in meaning with "lands, tenements, and hereditaments."

Certain expressions defined.

SECT. 229. The expressions "purchaser without notice," "purchaser for a valuable consideration," "purchaser in good faith for a valuable consideration," and such like expressions, shall be construed to embrace every person to whom any estate or interest in real estate shall be conveyed for a valuable consideration, and also every assignee of a lease, or mortgage, or other conditional estate.

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CHAPTER 29.

GENERAL PROVISIONS RESPECTING THE TITLE TO REAL ESTATE ACQUIRED BY VIRTUE OF SPECIAL PROVISIONS OF LAW.

ARTICLE 1. General provisions concerning sales on execution, and liens of judgments and decrees, and of sales by executors, administrators, and guardians.
ARTICLE 2. Of mortgages.
ARTICLE 3. Of assignments of property made pursuant to the application of an insolvent debtor, the effect thereof, and of the proceedings therein.

ARTICLE I.

General provisions concerning sales on execution, and liens of judgments and decrees, and of sales by executors, administrators, and guardians.

SECTION
1. What real estate and interest therein are liable to execution.
2. Such estate liable to all judgments &c.
3. The lien of judgments and decree.
4. Clerk shall give transcript to be filed in another county.
5. Judgment, &c., a lien from the time of filing such transcript.
6. Judgment, &c., to cease to be a lien after ten years.
7. The last section qualified;
8. Land office and certain other certificates, evidence of legal title.
9. Lands held thereon, subject to execution.
10. How far a recognizance shall bind lands.
11. Execution to another county binds the lands from the time of the levy.
12. Effect of a deed to a purchaser at sheriff's sale, &c., in certain cases.
13. Action by debtor against the purchaser, limited.
14. Contract for purchase of lands liable in equity for debts, &c.
15. The interest in such contract may be sold, &c.

SECTION
16. The value may be ascertained and applied by the court.
17. Reversal of a judgment or decree shall not avoid the sale in certain cases.
18. Right of action to the party injured.
19. Measure of damages where the judgment plaintiff is the purchaser.
20. Measure of damages in other cases.
21. Cases in which restitution of the premises shall be had.
22. Notice to the adverse party.
23. Proceedings thereon before the court.
24. Other remedies not affected.
25. Limitation of actions to recover lands sold by executors, &c.
26. Exceptions in favor of minors, &c.
27. Cases in which actions to recover lands sold by executors, &c., cannot be maintained.
28. Cases in which the title of a [purchaser at executor's, administrator's,or guardian's sale shall not be held void, &c.
29. Remedy against the executor, administrator, or guardian in certain cases.

SECTION 1. When, by any law of this state, real estate is authorized or directed to be sold by virtue of any execution, the same shall be construed to mean and include, The real estate liable to execution.

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1. All the lands, tenements, and hereditaments, of the judgment debtor, whether in possession, reversion, or remainder.*

2. Lands, tenements, and hereditaments fraudulently conveyed with intent to defeat, delay, or defraud creditors.

3. All rights of redeeming mortgaged lands, tenements, or hereditaments, and also all lands held by virtue of any land office certificate.

4. Lands, tenements, and hereditaments, and any estate or interest therein, holden by any one in trust for, or to the use of another, on execution issued on any judgment against the person to whose use, or for whose benefit, the same are holden.†

Liable to all judgments, decrees, &c.

SECT. 2. All real estate, subject to execution as above provided, shall be liable to all judgments, decrees, attachments, and executions in favor of the creditor against the debtor owning such real estate, or for whose use or benefit the same is holden as aforesaid.‡

The lien of judgments and decrees.

SECT. 3. All judgments in the supreme, circuit, and probate courts of this state, and also all final decrees in chancery, directing the payment of any sum of money, or of any debt, damages, or costs, shall be a charge, and shall operate as a lien upon the real estate liable to execution as aforesaid; and all chattels real of the person or persons against whom such judgments or decrees may be rendered, in the county within which any such judgment or decree may be rendered, and shall bind such real estate from the time of the rendition thereof.§

Clerk shall give a transcript to be filed &c.

SECT. 4. It shall be the duty of the clerk of the court rendering such judgment or decree, to make out an attested copy thereof, authenticated under the seal of said court, when applied to for that purpose by any person interested in any such judgment or decree; which copy may be filed by such person in the office of the clerk of any circuit court in this state; and when so filed such clerk shall record the same among the records of such circuit court, and enter the same on his judgment docket in like manner as he is required to enter judgments rendered in the court of which he is clerk.

*Lands purchased by the debtor after the judgment, and aliened before execution to a bona fide purchaser, are bound by the judgment. *Ridge* v. *Prather*, 1 Blackf., 401.

A purchaser at sheriff's sale obtains all the interest that the execution debtor had in the property. *Way* and *another* v. *Lyon*, 3 Blackf., 76.

†The statute of frauds, authorizing the sale of lands on execution against a cestui que trust, does not extend to the equitable interest possessed by the obligee of the title bond. *Modisett* and *another* v. *Johnson* and *others*. 2 Blackf., 431.

‡A judgment debtor cannot set up a title in a third person to defeat a purchaser under the judgment. *Hobson* v. *Doe and Harper*, &c., 4 Blackf., 487.

§The title of the purchaser at sheriff's sale takes effect from the date of the judgment. *Smith* v. *Allen* d. *Bigger*, 1 Blackf., 22.

A judgment debtor in possession, or his vendee subsequent to the judgment, is not entitled to notice to quit previously to an action of ejectment against him by the purchaser at sheriff's sale under the judgment. Ib.

The lien of a judgment is not limited to a year and a day, although an execution cannot issue thereafter without being awarded on scire facias. *Ridge* v. *Prather*, ib. 401.

A judgment is no lien on land which the debtor holds by a bond conditioned for the execution of a title on payment of the purchase money, though he had taken possession and paid the money before the rendition of the judgment; and a sheriff's sale on execution against the obligee of land so held, conveys no estate to the purchaser *Modisett*, &c., v. *Johnson*, &c., 2 Blackf., 431.

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Judgment, &c. a lien from the time of filing such transcript.

SECT. 5. Such judgment or decree, from the time said copy is filed in such clerk's office, shall bind and operate as a lien upon all the real estate, as aforesaid, of the person or persons against whom such judgment or decree may have been rendered, situate in the county within which such copy shall have been filed, recorded, and entered, as above required, as fully and completely as if such judgment or decree had been rendered by any competent court of such county.

Every judgment, &c., shall cease to be a lien after ten years.

SECT. 6. Every judgment and final decree shall cease to be a lien, or to bind any such real estate against purchasers and incumbrances, subsequent to such judgment or decree, by mortgage, judgment, decree, or otherwise, from and after ten years from the rendition of such judgment or decree.

The last section qualified.

SECT. 7. The time during which the party recovering such judgment or decree shall be restrained from proceeding thereon by the operation of any appeal, or writ of error, or by the injunction of any judge or court, shall not constitute any part of the term of ten years, in the last section specified.

Land office certificate, &c., evidence of legal title.

SECT. 8. A land office certificate of purchase, and also a land office receipt of the final payment of any lands, sold at such land office, shall, at any time before the issuing of a patent thereon, be evidence that the legal title in and to the lands specified in such certificate or receipt is in the legal and bona fide holder thereof; the same being unforfeited and in full force and validity.

Lands held thereon, subject to execution, &c.

SECT. 9. Any lands held on such certificate or receipt shall be subject to execution like any other real estate; and any judgment or decree for the payment of any debt, damages, sum of money, or costs, shall be a lien and charge thereon, as against the bona fide holder of such certificate or receipt, from the time of rendering the same, in like manner, and subject to the same provisions as in other cases.

How far recognizance shall bind lands

SECT. 10. Any recognizance taken by any court or by any officer, shall bind the real estate of the principal therein, from the time of taking the same, but shall only bind the real estate of any surety or sureties therein, from the time that judgment of forfeiture thereof is rendered by the court.

Execution to another county binds the property from the time of the levy.

SECT. 11. Whenever any execution shall issue against the real estate of the judgment debtor, to another county than the one in which the proceedings by virtue of which such execution has been issued, were prosecuted to final judgment or decree, such execution shall bind the real estate of such debtor from the time of levying the same thereon; and whenever any real estate is thus levied upon, the lien thereby acquired shall attach until sale is made, if due diligence is used to effect such sale.

Effect of a deed to a purchaser at sheriff's sale, &c., in certain cases. *Smith* v. *Allen*, d *Bigger*, 1 Blackf. 22;

SECT. 12. When a deed shall be executed to a purchaser of any real estate, sold by virtue of any judgment or decree, or an execution issued thereon, such purchaser shall be deemed vested with the legal estate from the time of such sale, and may maintain an action for any injury to such real estate, done at any time subsequent to the sale; but the court ordering and

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cited ante page 454.

directing any sale of real estate, upon proceedings in chancery, may decree the time at which the estate may vest in the purchaser, and his right to maintain any action for any injury to the real estate shall be complete from the time the estate shall so vest.

Action by the debtor against purchaser limited, &c.

SECT. 13. No action for the recovery of any real estate, sold as prescribed in the preceding sections of this article, shall be brought by the debtor or his heirs, or by any person claiming under him, by virtue of any title, right, or interest, acquired from or through the debtor after the rendition of the judgment or decree under which such sale was made, unless such action shall be brought within ten years after such sale.

Contract for purchase of lands liable in equity for debts, &c. *Modesett, &c.* v. *Johnson, &c.*, 2 Blackf. 431; cited ante page 454.

SECT. 14. The interest of any person holding a contract for the purchase of lands, shall not be bound by the rendition or docketing of any judgment or decree, nor be sold by execution on any judgment or decree otherwise constituting a lien on real estate according to the provisions of this chapter; but whenever any execution against the property of such person shall have been issued on a judgment or decree, and shall have been returned unsatisfied, in whole or in part, the party suing out such execution may file a bill in chancery against such defendant, and the party bound to perform such contract, to prevent the transfer thereof, and to obtain satisfaction of the sum remaining due on such judgment or decree out of the interest of the defendant in said contract.

The interest in such contract may be sold, &c.

SECT. 15. The interest of the defendant in such contract may be sold pursuant to the decree of the court, or transferred to the complainant in such manner and upon such terms as the court shall deem most conducive to the interest of the parties; and the court shall have power in such suit to decree a specific performance of such contract either in favor of the complainant or in favor of the purchaser, if the interest in the said contract shall be directed to be sold.

The value may be ascertained and applied by the court.

SECT. 16. The value of the interest of the defendant holding such contract may be ascertained by the court, and the same, or so much thereof as may be necessary for that purpose, may be applied to the payment of the judgment or decree of the complainant or person who may be entitled to the same, and the residue applied to the benefit of the defendant.

Reversal of judgment or decree shall not avoid sale, &c.

SECT. 17. The reversal of any judgment or decree, under or by virtue of which any real estate shall have been sold or transferred, or the title thereto decreed or confirmed, shall not have the effect to avoid any such sale, transfer, or title, decreed or confirmed, if the person to be affected thereby shall be, or shall claim under a bona fide innocent purchaser, without notice, and not a party to the record, or attorney, or solicitor, of any party thereto.*

* The sale of real estate on a void execution is a nullity, and vests no title in the purchaser. *Elliott* v. *Armstrong*, 2 Blackf. 199.

The title of a bona fide purchaser of real estate at sheriff's sale cannot be impeached for any error on the judgment; nor on account of the execution having issued out of season; nor for any fault of the sheriff in not pursuing the direction of the statute, as

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SECT. 18. In every case of reversal where, by reason of the preceding section, the party injured cannot be restored to his estate, he shall be entitled to his action against the person by virtue of whose judgment or decree he has been so injured. Right of action to the party injured.

SECT. 19. If the person thus sued shall have been the purchaser of such real estate at any such sale, or had the same transferred, or the title thereto decreed or confirmed to him by virtue of such decree, the plaintiff shall recover the reasonable value of such estate, with interest from the time of injury done. Measure of damages where the judgment plaintiff is the purchaser.

SECT. 20. In every other case, thus sued on, the plaintiff in such action shall recover of the person sued the amount for which such real estate was sold by virtue of such decree or judgment, with interest from the day of such sale, or shall recover to the amount of benefit derived by the person sued by virtue of the transfer or title decreed or confirmed by such decree, with interest from the time when such benefit accrued. Measure of damages in other cases.

SECT. 21. In every case of a reversal of any judgment or decree, under or by virtue of which any real estate shall have been sold or transferred, or the title thereto decreed or confirmed, and not provided for in the four preceding sections, the person deprived of such real estate shall have restitution thereof, as provided in the three next following sections. Cases in which restitution of the premises shall be had.

SECT. 22. Such person may cause notice to be served on the purchaser of said premises, or his tenant, or other person in possession thereof, that at the next term of the court out of which the execution in such case issued, or in which the decree was rendered by virtue of which such sale was made, he will move said court to be restored to his possession of the premises aforesaid. Notice to the adverse party.

SECT. 23. Upon proof that notice of such motion has been duly served ten days before the first day of the term, the court may proceed to hear the same, and the proofs and allegations of the parties; and if the court is satisfied that the person making such motion is entitled to have his possession of said premises restored, the court shall render judgment accordingly, and direct a writ of restitution to issue to the sheriff, commanding him to Proceedings thereon before the court.

respects the inquest, advertisement of sale, &c. To support his title, however, the purchaser must show the sale to have been authorized by the judgment of a court of competent jurisdiction, and by the kind of execution which the statute prescribes. *Armstrong* v. *Jackson*, d. *Elliott*, 1 Blackf. 210.

But a sale by the sheriff of land to the execution plaintiff for less than one half of the appraised value, as required by the statute of 1820, is void, and his deed conveys no title to the purchaser. *Harrison*, et al., v. *Doe*, &c., 2 Blackf. 1.

If the purchaser of real estate at sheriff's sale be the execution plaintiff, he is considered a purchaser with full notice, and accountable for all irregularities. Ib.

The conduct of the sheriff, in selling the whole instead of a part of the lot, may avoid the sale. *Doe*, ex dem., *Maguire* v. *Smith*, 4 Blackf. 228.

So to impeach the title acquired at sheriff's sale, evidence may be received, showing that when the sheriff sold the land, it was known to the purchaser that the rents and profits had not been offered for sale. Ib.

A purchaser of land at sheriff's sale is not bound to show that the debtor had not personal property to satisfy the judgment. It is only necessary for him to shew the judgment of a competent court, and the kind of execution which authorizes the sheriff to sell. He has a right to presume that all the intermediate proceedings are correct. *Frakes* v. *Brown*, 2 Blackf. 295.

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deliver said premises to the person entitled thereto by virtue of such judgment.

Other remedies not affected.

SECT. 24. Nothing herein contained shall be construed to prohibit any party from recovering said premises, or the possession thereof, by any action by which the same may be recovered by force of any law of this state.

Limitation of actions to recover lands sold by executor, &c.

SECT. 25. No action for the recovery of any real estate, sold by any executor or administrator, under the provisions of any statute of this state, shall be maintained by any heir or any other person claiming under the testator or intestate of such executor or administrator, unless it be commenced within five years next after such sale; and no action for the recovery of any real estate, sold in like manner by the guardian of any ward, shall be maintained by the ward, or by any person claiming under him, unless such action be commenced within five years next after the termination of the guardianship of such ward.

Exceptions in favor of minors, &c.

SECT. 26. Excepting only that persons out of the state, and minors, and others under any legal disability to sue at the time when the right of any action specified in this article shall first accrue, may commence such action at any time within five years next after he shall arrive at full age, return to the state, or such disability shall be removed, as the case may be.

Cases in which an action to recover lands sold by an executor, &c. cannot be maintained.

SECT. 27. In case any action shall be brought for the recovery of any real estate, sold by any executor, administrator, or guardian, under the direction of any court, or if any other action be brought by which the validity of the sale shall be contested, such action shall not be maintained, nor such sale avoided, on account of any irregularity or defect in the proceedings, if it shall be made satisfactorily to appear,

1. That the sale was authorized and directed by a court of competent jurisdiction.

2. That the executor, administrator, or guardian, took the oath, and gave bond, as may be required by law.

3. That notice of the time and place of sale was given, in the manner prescribed by law.

4. That the premises were sold accordingly, and are held by one, or under one, who purchased them in good faith.

Cases in which the title of a purchaser at executor, administrator, or guardian's sale shall not be held void, &c.

SECT. 28. If the validity of a sale by an executor, administrator, or guardian, shall be drawn in question by any person claiming adversely to the title of the deceased testator, or intestate, or of the ward, or claiming under any title that is not derived from or through the deceased testator or intestate, or from or through such ward, the sale shall not be held void, on account of any irregularity or defect in the proceedings, if it shall appear that the executor, administrator, or guardian, was authorized and directed by a court of competent jurisdiction to make the sale, and that a deed, in legal form, was executed and delivered for the conveyance of the premises.

Remedy against the exe-

SECT. 29. If in relation to the sale of real estate by any executor, administrator, or guardian, there shall be any neglect,

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misconduct, or irregularity in the proceedings, by which any person interested in such estate shall suffer damage, such aggrieved person may recover compensation therefor, in a suit on the bond of the executor, administrator, or guardian, or otherwise, as the case may be.

Executor, &c. in certain cases.

ARTICLE II.

Of mortgages.

SECTION

30. The right of the mortgagee to recover mortgaged premises, restricted.
31. Covenant to pay, &c, not to be implied in a mortgage, &c.
32. Proceedings on mortgage in chancery.
33. Court may decree sale, &c.
34. If mortgaged premises insufficient, court may decree payment of the balance, and issue execution therefor.
35. After bill filed, proceedings at law prohibited.
36. Surety of mortgagor may be made a party to the bill.
37. Bill shall state whether there have been any proceedings at law.
38. If there has been a judgment at law, execution must have been returned unsatisfied, &c. before the bill can be prosecuted.
39. If instalments only are due on the mortgage, bill to be dismissed on payment of the amount due.
40. Defendant, after decree in such case, may bring money into court; but decree to stand for future instalments.
41. Payment of the instalment due may be decreed out of part of the premises.
42. Further decree in such case.
43. The whole of the mortgaged premises may be sold.
44. In such case all the instalments shall be paid.
45. Sale of mortgaged premises under decree to be on execution.
46. How the proceeds shall be applied.
47. Sale, &c. shall vest the interest mortgaged in the purchaser.

SECTION

48. Equity of redemption shall not be sold in certain cases.
49. How execution in such cases shall be endorsed.
50. Sheriff's return.
51. Sale under a power contained in a mortgage.
52. When such sale shall be authorized.
53. Notice of sale to be given.
54. What the notice shall specify.
55. Postponement of sale.
56. Sale shall be at public auction.
57. Mortgagee may purchase.
58. Such sale shall be equivalent to foreclosure.
59. Affidavit of the sale, &c.
60. Affidavit of notice, &c.
61. Affidavits to be recorded in the recorder's office.
62. Shall be presumptive evidence, &c.
63. Noted on the record of the mortgage.
64. Shall be the mortgagee's evidence of title, if he be the purchaser.
65. This article not to affect mortgages to the state.
66. Conveyances to purchasers, &c.
67. Mortgagor may enjoin the sale under a power, &c.
68. Certain mortgages preferred to pre-existing judgments.
69. Entry of satisfaction of the mortgage on the record.
70. May be entered on certificate of the mortgagee.
71. Recorded assignment of a mortgage not constructive notice, &c.

SECT. 30. No action shall hereafter be maintained, by which a mortgagee, or his assigns or representatives, shall recover the mortgaged premises, or the possession thereof, unless there be,

The right of the mortgagee to recover the

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in addition to the usual covenants, a clause inserted in such mortgage, by which it is specially provided that the mortgagee shall be entitled to the possession of such premises.

mortgaged premises, restricted.

4 Kent 156, note *b*.

Covenant to pay, &c. not to be implied in a mortgage.

SECT. 31. No mortgage shall be construed as implying a covenant for the payment of the sum intended to be secured, so as to enable the mortgagee, his assignees, or representatives, to maintain an action for the recovery of such sum; and where there is no express covenant contained in the mortgage for such payment, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

Proceedings on mortgage in chancery.

SECT. 32. Whenever default shall be made or suffered in the payment of the mortgage money secured by any mortgage, or in the performance of any condition or conditions, which should have been done or performed as required by the conditions and provisions of any mortgage or deed of defeasance, the mortgagee, or person holding such deed of defeasance, his heirs, executors, administrators, or assigns may file a bill in chancery, in the proper circuit court, according to the course and practice of such court, praying the court to order and decree the sale of the mortgaged premises for the payment of the debt or damages of the complainant, and the court shall make such order and decree in the premises as shall be just and right.*

Court may decree a sale of mortgaged premises, &c.

SECT. 33. Whenever a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage and the costs of suit.

If mortgaged premises insufficient, court may decree the payment of the balance, and issue execution therefor.

SECT. 34. When a bill shall be filed for the satisfaction of a mortgage, the court shall not only have power to decree and compel the delivery of the possession of the mortgaged premises to the purchaser thereof, but on the return of the sale thereof, the court shall also have power to decree and direct the payment, by the mortgagor, of any balance of the mortgage debt that may remain unsatisfied after a sale of the premises, in the cases in which such balance is recoverable at law; and for that purpose may issue executions as in other cases against other property of the mortgagor, or against his person.

After bill filed, proceedings at law prohibited.

SECT. 35. After such bill shall be filed, while the same is pending, and after a decree rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court in which such bill shall be pending.

*1. A joint mortgage to two persons to secure debts due to them severally, may be foreclosed on a joint bill filed by the mortgagees. *Shirkey* v. *Hanna*, et al., 3 Blackf. 403.

2. The heir, and not the executor or administrator of a deceased mortgagor, is the proper party defendant to a bill for a foreclosure and sale of the mortgaged premises. *Slaughter* v. *Foust*, et al., 4 Blackf. 379.

3. The statute which prohibits the commencement of a suit against an executor or administrator, until the expiration of a year from the date of his appointment, does not apply to a bill for a foreclosure, &c. against the heir of the mortgagor. Ib.

4. In a bill of foreclosure, and for the sale of the land mortgaged, the premises must be so described that, should a sale be decreed, the officer may know on what land to enter to execute the order of the court. *Whittlesy and wife* v. *Beall*, 5 Blackf. 143.

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ARTICLE 2.

Surety of mortgagor may be made a party to the bill.

SECT. 36. If the mortgage debt be secured by the obligation, or other evidence of debt hereafter executed, of any other person besides the mortgagor, the complainant may make such person a party to the bill, and the court may decree payment of the balance of such debt remaining unsatisfied after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

Bill shall state proceedings at law, if any.

SECT. 37. Upon filing a bill for the foreclosure or satisfaction of a mortgage, the complainant shall state therein whether any and what proceedings have been had at law, for the recovery of the debt secured thereby, or any part thereof, and whether such debt or any part thereof has been collected.

If judgment at law has been obtained, an execution must have been returned, &c.

SECT. 38. If it appear that any judgment has been obtained in a suit at law, for the moneys demanded by such bill, or any part thereof, no proceedings shall be had in such case, unless to an execution against the property of the defendant in such judgment the sheriff shall have returned, that the said execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution, except the mortgaged premises.

Instalments only being due, bill dismissed on payment.

SECT. 39. Whenever a bill shall be filed for the satisfaction or foreclosure of any mortgage, upon which there shall be due any interest, or any portion or instalment of the principal, and there shall be other portions or instalments to become due subsequently, the bill shall be dismissed, upon the defendant's bringing into court, at any time before the decree of sale, the principal and interest due, with costs. *

Defendant may bring money into court after decree in such case.

SECT. 40. If after a decree for sale entered against a defendant in such case, he shall bring into court the principal and interest due, with the costs, the proceedings in the suit shall be stayed; but the court shall enter a decree of foreclosure and sale, to be enforced by a further order of the court, upon a subsequent default in the payment of any portion or instalment of the principal, or of any interest thereafter to grow due.

Further decree.

In what case payment of the instalments may be decreed by partial sale, &c.

SECT. 41. If the defendant shall not bring into court the amount due, with costs, or if for any other cause, a decree shall pass for the complainant, the court shall direct a reference to a master, to ascertain and report the situation of the mortgaged premises, and if it shall appear that the same can be sold in parcels, without injury to the interests of the parties, the decree shall direct so much of the said premises to be sold as will be sufficient to pay the amount then due on such mortgage, with costs; and such decree shall remain as security for any subsequent default.

*A mortgage given to secure payment of a debt by instalments, contained an agreement that on default in the payment of any one instalment, the whole debt should be then payable, subject to a deduction of interest from the payment of the money, to the time when it was to have been paid, had no default occurred. *Held*, that on the non-payment of any instalment when due, a bill of foreclosure might be filed. *Held*, also, that the liability to pay the whole debt, upon any such default, could not be considered as a penalty. *Andrews* v. *Jones*, et. al., 3 Blackf. 440.

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Further decree.

SECT. 42. If in the case mentioned in the last preceding section, there shall be any default subsequent to such decree, in the payment of any portion or instalment of the principal, or of any interest due upon such mortgage, the court may, on the petition of the complainant, by a further order founded on such first decree, direct a sale of so much of the mortgaged premises, to be made under the said decree, as will be sufficient to satisfy the amount so due, with the costs of such petition, and the subsequent proceedings thereon; and the same proceedings shall be had as often as a default shall happen.

The whole premises may be sold.

SECT. 43. If in any of the foregoing cases it shall appear to the court that the mortgaged premises are so situated that the sale of the whole will be most beneficial to the parties, the decree shall, in the first instance, be entered for the sale of the whole premises accordingly.

In such case, all the instalments shall be paid.

SECT. 44. In such case, the proceeds of such sale shall be applied as well to the interest, portion, or instalment of the principal due, as towards the whole, or residue of the sum secured by such mortgage, and not due and payable at the time of such sale; and if such residue do not bear interest, then the court may direct the same to be paid, with a deduction of the rebate of legal interest for the time during which such residue shall not be due and payable.

Sales of mortgaged premises under decree to be on execution, and effect thereof.

SECT. 45. All sales of mortgaged premises, under the decree of the court, shall be sold as other lands are required by law to be sold on execution; and the sheriff selling the same shall execute and deliver a proper deed of conveyance therefor to the purchaser thereof, as in cases of sales of real estate under execution; and any deed thus executed, in pursuance of any such sale, shall be as valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against each of them, and against all parties to the proceedings therein, and against their heirs respectively, and all persons claiming under such heirs.

How the proceeds shall be applied.

SECT. 46. Whenever any real estate is sold under any decree, rendered in proceedings on any such mortgage or deed of defeasance, the proceeds shall be applied to the payment and discharge of the amount adjudged to be paid by such court, and of the costs awarded; and if there be any surplus, the same shall be rendered by the sheriff to the defendant entitled thereto.

Sale, &c. shall vest the interest mortgaged in the purchaser.

SECT. 47. No sale or delivery of real estate, on execution or otherwise, pursuant to any decree of sale or foreclosure rendered on any mortgage or defeasible deed, nor any such sale by virtue of any power contained in any mortgage or defeasible deed, shall be construed to create or convey any further or greater term or estate to the vendee, mortgagee, or creditor to whom the same may be sold or delivered, than shall have been mortgaged by any such mortgage or defeasible deed.

Equity of redemption shall not be sold in certain cases.

SECT. 48. When a judgment shall be recovered for a debt secured by mortgage of real estate, or for any part of such debt, it shall not be lawful for the sheriff to sell the equity of

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redemption of the mortgagor, his heirs or assigns in such estate, by virtue of any execution on such judgment. ARTICLE 2.

2 Johns, Ch. Rep., 125. 4 Kent, 183.

SECT. 49. Whenever any execution against the property of the defendant shall be issued upon such judgment, the plaintiff, or his attorney, shall endorse thereon a brief description of the premises mortgaged, referring to the page and book of the record in which such mortgage is recorded, with a direction to the sheriff not to levy such execution upon the said premises, or any part thereof. Execution in such case shall be endorsed.

SECT. 50. If such execution shall not be collected of the other property of the defendant, the sheriff shall return the same unsatisfied, in whole or in part, as the case may require. Sheriff's return.

SECT. 51. Every mortgage of real estate, containing therein a power to the mortgagee, or any other person, to sell the mortgaged premises, upon any default being made in any condition of said mortgage, may be foreclosed by a sale of said premises, in the cases and in the manner hereinafter specified. Sale under a power contained in the mortgage. See chap. 28, sect. 217.

SECT. 52. To entitle any party to make such foreclosure, it shall be requisite, When such sale shall be authorized.

1. That some default in a condition in such mortgage shall have occurred by which the power to sell became operative.

2. That no suit or proceeding shall have been instituted at law, or in chancery, to recover the debt, or any part thereof, then remaining secured by such mortgage, nor to foreclose said mortgage.

3. That such mortgage and power of sale shall have been duly recorded.

SECT. 53. Notice that such mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, shall be given, as follows: Notice of such sale.

1. By publishing the same for eight weeks successively, at least once in each week, in a newspaper printed in the county where the premises intended to be sold are situated; or if such premises be situated in two or more counties, in a newspaper printed in either of them; and if no newspaper is printed in the county in which such premises are situated, such publication shall be in the county nearest thereto in which a newspaper is printed.

2. By setting up and continuing for eight weeks successively, prior to the time of sale, a copy of such notice in the clerk's office of the county or counties in which such premises may be situated.

SECT. 54. Every such notice shall specify, What the notice shall specify.

1. The name of the mortgagor and mortgagee, and the assignee of the mortgagee, if any.

2. The date of the mortgage and power of sale, and where the same are recorded.

3. The amount claimed to be due thereon at the time of the first publication of notice.

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4. A description of the mortgaged premises, conforming substantially with the description contained in the mortgage; and,

5. The time and place of such sale.

Postponement of sale.

SECT. 55. Such sale may be postponed, with the consent of the person entitled to the equity of redemption, by inserting a notice of such consent and postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and a copy thereof in the proper clerk's office, and by continuing such publication until the day to which such sale shall have been postponed.

Sale shall be at public auction.

SECT. 56. Such sale shall be at public auction, in the day time, in the county where the mortgaged premises, or some part of them are situated. If the premises consist of distinct farms, tracts, or lots, they shall be sold separately; and no more farms, tracts, or lots shall be sold than shall be necessary to satisfy the amount due on such mortgage, with interest and the costs and expenses allowed by law.

Mortgagee may purchase.

SECT. 57. The mortgagee, his assigns, and his or their legal representatives, may fairly and in good faith, purchase the premises so advertised, or any part thereof, at such sale.

Such sale shall be equivalent to foreclosure.

SECT. 58. Every sale pursuant to a power as aforesaid, and conducted as herein prescribed, made to a purchaser in good faith shall be equivalent to a foreclosure and sale under the decree of a court of equity, so far only as to be an entire bar of all claim of equity of redemption of the mortgagor, his heirs, and representatives, and of all persons claiming under him or them by virtue of any title subsequent to such mortgage; but no mortgagee of the same premises, or any part thereof, whose title accrued prior to such sale, nor any creditor to whom the mortgaged premises, or any part thereof, were bound before such sale by any judgment at law or decree in equity, shall be prejudiced by any such sale, nor shall their rights or interests be in any way affected thereby.

Affidavit of the sale, &c.

SECT. 59. An affidavit of the fact of any sale pursuant to such notice, may be made by the person who officiated as auctioneer at such sale, stating the time and place at which the same took place; the sum bid; and the name of the purchaser; and shall be annexed to a printed copy of the notice of sale.

Affidavit of notice, &c.

SECT. 60. An affidavit of the publication of such notice of sale, and of any notice of postponement, may be made by the printer of the newspaper in which the same was inserted, or by his foreman or principal clerk, and an affidavit of the affixing of a copy of such notice in the clerk's office, may be made by the person who affixed the same, or by any other person who saw such notice so posted during the time required.

Affidavits to be recorded.

SECT. 61. The affidavits specified in the last two sections, may be taken and certified by any judge of a court of record, justice of the peace, or notary public, and may be filed in the recorder's office of the county where such sale took place.

Shall be evidence, &c.

SECT. 62. Such affidavit shall be recorded at length by such recorder; and such original affidavits, the record thereof, and

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certified copies of such record shall be presumptive evidence of the facts therein contained. ARTICLE 2.

Noted on the record of the mortgage.

SECT. 63. A note referring to the page and book where the evidence of any sale having been made under a mortgage is recorded, shall be made by the recorder recording such evidence, in the margin of the record of such mortgage, if such record be in his office.

Shall be mortgagee's evidence of title if he is the purchaser.

SECT. 64. When the mortgaged premises, or any part of them, shall have been purchased at such sale by the mortgagee, his legal representatives, or his or their assigns, as hereinbefore provided, the affidavits of the publication and affixing notice of sale, and of the circumstances of such sale, shall be evidence of the sale and of the foreclosure of the equity of redemption as herein specified, without any conveyance being executed, in the same manner and with the like effect, as a conveyance executed by a mortgagee upon such sale to a third person.

This article not to affect mortgages to the state.

SECT. 65. Nothing contained in this article shall affect the provisions contained in these Revised Statutes in relation to the foreclosure of mortgages to the state of Indiana, so far as the same are contrary to the provisions of this article.

Conveyance to the purchaser.

SECT. 66. The person empowered to make such sale as above specified in this article, shall execute a conveyance to the purchaser, which shall have the like force and effect which a conveyance by the sheriff, under a decree of foreclosure and sale would have had.

Mortgagor may enjoin the sale, &c.

SECT. 67. If the mortgagee, or the person empowered to make such sale, shall, in any respect, violate his authority, whereby such mortgagor may be injured, or shall refuse any just credits or payments, such mortgagor may, by his bill in chancery, enjoin such sale, conveyance, or other proceedings under such power, and shall have such relief in the premises as may be just and equitable.

Certain mortgages preferred to judgments.

SECT. 68. Whenever lands are sold and conveyed, and a mortgage is given by the purchaser at the same time, to secure the payment of the purchase money, or any part thereof, such mortgage shall be preferred to any previous judgment which may have been obtained against such purchaser.

Entry of satisfaction of mortgage on the record.

SECT. 69. Every mortgagee of lands whose mortgage has been recorded, having received full payment of the sum or sums of money therein specified, from the mortgagor, shall, at the request of such mortgagor, enter satisfaction on the margin or other proper place in the record of such mortgage, which shall operate as a complete release and discharge thereof; and shall forever bar all actions and suits brought, or to be brought, thereon.

May be entered on certificate of the mortgagee.

SECT. 70. Where such mortgage has been paid and satisfied by the mortgagor he may take a certificate thereof duly acknowledged by the mortgagee or his lawful agent, as herein required for the acknowledgment of conveyances to entitle the same to be recorded; which certificate and acknowledgment shall be recorded by the recorder in whose office such mort-

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gage is reorded, with a reference to the book and page containing the record of the mortgage aforesaid; and such recorded certificate shall forever discharge and release the mortgagor from such mortgage, and forever bar all suits and actions thereon.

Recorded assignment of a mortgage, not notice, &c.

SECT. 71. The recording of the assignment of a mortgage shall not be deemed, of itself, notice to a mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them or any of them, to the mortgagee or any assignee, before actual notice of such assignment.*

ARTICLE III.

Of assignments of property made pursuant to the application of an insolvent debtor, the effect thereof, and of the proceedings therein.

SECTION

72. An assignment by an insolvent debtor shall relieve him.
73. His petition.
74. Schedule — its contents, and what property insolvent may retain.
75. Must be verified by oath, &c.—Form of affidavit.
76. Pendency of petition ordered to be notified by the clerk.
77. Publication of notice.
78. Petitioner to be exempted from arrest if he file bond.
79. Production of clerk's certificate thereof, to discharge petitioner from custody.
80. Creditor may move to set aside bond for insufficiency, &c.
81. Effect of order determining insufficiency of bond.
82. Petitioner if in prison, may be released on filing bond.
83. Five days' notice first given to creditor.
84. Creditor may show cause against such release.
85. Court may hear the matter.
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87. Petitioner in custody may prosecute petition although he may not be able to give bond.
88. After publication, court shall proceed to hear the petition.
89. Cause may be continued.
90. Creditor may file objections and have a jury, &c.
91. Insolvent may be examined on oath on such trial.
92. Any creditor may appear and examine debtor generally.
93. Petition may be dismissed.
94. Dismissed on failure to prosecute, &c.
95. When so dismissed to be at petitioner's costs.
96. Of the payment of costs.
97. When debtor not entitled to a discharge.
98. Not entitled unless he account for moneys, &c., except what may be necessary for his support, &c.
99. If entitled to be discharged, court shall make an order that he assign his property to trustees.

*A mortgage may be assigned, like other evidences of debt, by an endorsement without seal; a mere delivery of the mortgage security, with a transfer of the debt, is a sufficient assignment of the mortgage. *Clearwater* v. *Rose*, 1 Blackf. 137. *Blair* v. *Bass*, 4 Blackf. 539.

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SECTION.
100. Trustee to give bond.—Discharge.
101. Discharge to be entered on the order book—effect thereof.
102. Not to exempt property from payment of debts, nor to affect any lien, &c.
103. If in custody, debtor to be released.
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106. Suit on petitioner's bond.
107. Further proceedings by scire facias.
108. Discharge may be declared void.
109. At any time within three years.
110. Ten days' notice to be given.
111. Appointment of trustees not affected by annulling discharge.
112. Assignment shall vest in trustees the interest, &c., of the insolvent debtor.
113. Two assignments to be made if necessary.
114. Real property to be assigned by deed and recorded.
115. Oath of trustees.
116. Powers, &c., of trustees.
117. Provisions as to one trustee.
118. Surviving trustee.
119. Enumeration of the powers and duties of trustees.
120. When set off may be allowed.
121. After assignment, insolvent cannot maintain action, &c.
122. Trustees to give notice of their appointment.
123. May institute suits.
124 Convert the estate into money.
125. Notice to creditors to present their claims.
126. Trustees may adjourn their meetings.

SECTION
127. Creditor failing to exhibit his debt, shall not share in the estate.
128. Expenses, &c., to be paid first.
129. Residue to be distributed.
130. Further dividends until the whole estate is distributed.
131. Debts not due shall share in the distribution.
132. Trustees may retain money on account of claims not established.
133. Unclaimed dividend to be distributed to other creditors.
134. Trustee to return an account to the court.
135. Final account rendered.
136. Allowance of report on final settlement.
137. Surplus, if any, to be paid to insolvent.
138. Exceptions to report of trustees.
139. Interlocutory decisions may be appealed from, &c.
140. Trustees to be subject to the order of the court.
141. Court may fill vacancies in the appointment of trustees.
142. Trustee may renounce.
143. Trustee wishing to renounce, must file an account, &c.
144. When and where filed.
145. Hearing of the application.
146. Allowance of application to renounce.
147. Successor to be appointed and assignment executed.
148. Renouncing trustee to deliver effects, &c., before discharge.
149. Discharge of such trustee.
150. New assignment recorded.
151. Costs of renunciation.
152. Clerk to file papers, &c., but not to make a complete record.

Assignment by an insolvent debtor.

SECT. 72. Every insolvent debtor, whether civil process shall have issued against him or not, may obtain relief as hereinafter provided, upon executing an assignment of all his estate, real and personal, for the benefit of his creditors, except so much as may be herein exempted, and upon complying with the provisions of this article. *

*Until congress exercise the right of passing uniform laws on the subject of bankruptcy, any state may enact a bankrupt law not impairing the obligation of contracts. *Pugh* v. *Bussell*, 2 Blackf. 394.

A state law merely discharging the person of the debtor, not his after acquired property, for debts contracted in the state between its citizens, is constitutional, whether the debt was contracted before or after the passage of the law. But if the law discharge the debtor's after acquired property as well as his person, a discharge under it is not

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His petition.

SECT. 73. Such debtor shall file in the circuit court of the county where he resides, or if he be arrested or in custody under civil process, then he shall file, in the county where he may be in custody, his petition in writing, setting forth therein the circumstances of his indebtedness, together with such other matters as may be necessarily connected therewith, and praying for relief accordingly.

Schedule.

SECT. 74. On presenting such petition, the insolvent shall deliver therewith a schedule, containing an account of all his creditors, and an inventory of his estate, real and personal, as follows, to-wit:

List of creditors.

1. A full and true list of all his creditors.

Place of residence.

2. The place of residence of each creditor, if known to him, and if not known, the fact to be so stated.

Amount due each creditor.

3. The sum owing to each creditor, and the nature of each debt or demand, whether arising on written security, on account, or otherwise.

Cause of indebtedness, &c.

4. The true cause and consideration of such indebtedness, and the place where such indebtedness accrued.

Statement of judgments, &c.

5. A statement of any existing judgment, mortgage, or collateral, or other security for the payment of any such debt.

Estate, real and personal.

6. A full, true, and exact inventory of all the estate, real and personal, of every kind and description, by him owned, possessed, or claimed, in any way or manner.

Inventory of real estate.

7. Such inventory, if any real estate is inserted therein, shall particularly designate and describe the same by the proper metes and bounds, and specify the title of the insolvent thereto, and his estate or interest therein, and the incumbrances existing thereon, if any, the number of acres of each tract or parcel, the value thereof, and where situate; and there shall also be delivered therewith to the clerk, whose receipt therefor he shall take, his title papers, evidences of title, or the contract or agreement by virtue of which such real estate is held or claimed; or if the same cannot be done, a reasonable and sufficient excuse shall be stated.

Items of personal goods, &c.

8. Such inventory shall also specify all and singular the items of his goods, chattels, credits, rights, judgments, decrees, debts, moneys, accounts, things in action, and effects, by a succinct and exact description thereof, belonging, due, or accruing to such insolvent, or to any other person for his advantage, use, or benefit; and he shall also specify therein, by a brief statement, the books, bills, notes, bonds, obligations, contracts, agreements,

valid, unless the creditor make himself a party to the proceedings which lead to the discharge. *Pugh* v. *Bussell*, 2 Blackf. 394.

A discharge by a state law, has no operation out of the state over contracts not made and to be carried into effect within the state, nor over the citizens of other states who do not make themselves parties to the proceedings under the law. *Pugh* v. *Bussell*, 2 Blackf. 394.

A discharge under an insolvent law, of the person and not of after acquired property, may be pleaded in discharge of the person from imprisonment, and the judgment for the plaintiff, if the plea be supported, is, that he recover his debt, &c., to be levied not on the person of the defendant, but only on his property. *Pugh* v. *Bussell*, 2 Blackf. 394.

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vouchers, and securities relating thereto; and shall also deliver therewith, to the clerk of such court, all books, bills, notes, bonds, obligations, contracts, agreements, vouchers, securities, accounts, transcripts of judgments, or other evidences thereof, and take the receipt of such clerk therefor, or if the same cannot be so delivered, a reasonable and sufficient excuse shall be stated; and he shall also embody in said inventory a sufficient and certain direction how to get possession of all the goods, chattels, and effects specified in said inventory, which is not in his immediate possession. ARTICLE 3.

9. Said insolvent shall be entitled to keep and retain for his own use and benefit, such articles of property as are by law exempt from execution, and he shall state the same in such inventory, with the value of each article, and that the same have been thus kept and retained by him. Insolvent may keep property exempt from execution.

SECT. 75. An affidavit, substantially in the following form, sworn to before the clerk of such circuit court, shall be annexed to said petition and schedule, and shall be subscribed in the presence of the officer administering the oath, and certified by such officer: Must be verified by oath.

"I ——— ———, do swear (or affirm, as the case may be,) that the account of my creditors, and the inventory of my estate, and all other matters and things alleged and stated in my said petition and schedule, as above, are, in all respects, just, full and true, to the best of my knowledge, remembrance, and belief; that I have truly and fully therein set forth the names of all my creditors, with the sums respectively due from me to each creditor, so far as I can ascertain the same; that I have also in my said schedule, set forth, so far as I know, a true, full, and exact inventory, description and discovery of all the property, real and personal, to which I am in any way entitled, in law and equity; and all debts, dues, demands, accounts, moneys, credits, goods, chattels, effects, judgments, decrees, bills, notes, bonds, obligations, and agreements, belonging, owing, or accruing to me, or to any other person for my advantage, use, or benefit, or held in trust for me, or to become due to me, or to any other person for my advantage, use, or benefit; that I have not, at any time or in any manner, disposed of, conveyed, concealed, or made over any part of my estate, for the future benefit of myself or my family, or any person whomsoever, or done any other act or thing relating thereto, in order to defraud my creditors, or any of them; nor have I retained or kept back any of my property of any kind or description, except so much as is exempt from execution, and specified in my said schedule; that I have, in no instance, way, or manner, created or acknowledged any debt, account, or liability, or confessed or suffered any judgment, or decree for a greater sum than I have honestly owed, whereby to secure any advantage or benefit to myself or family, or any person whomsoever, or to defraud any of my creditors; and that I have not, in any way, compounded. or otherwise made any adjustment with any of my creditors, Form of affidavit.

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whereby my estate will be lessened or diminished, with a view fraudulently to obtain my discharge as an insolvent debtor."

Pendency of such petition ordered to be notified.

SECT. 76. Upon the filing of such petition and schedule, verified as aforesaid, the clerk of said court shall make and enter an order, in the order book of said court, briefly and succinctly setting forth the object of said petition, and that said petitioner will, at the term of said court next after due publication of notice of the pendency of said petition, (specifying the term in such order,) apply for relief, and for his final discharge under the provisions of this article, and requiring his creditors to appear at said term of the court, and show cause, if any they have, why the prayer of the petitioner should not be granted.

Publication of notice.

SECT. 77. A copy of said order, attested by the clerk, shall be published in some newspaper printed in said county where such petition is filed; or if none is published therein, then in the county nearest thereto in which a newspaper is published, for three weeks successively, at least sixty days prior to the term of the court at which such application can be first acted upon, and a like copy shall be set up in the clerk's office of said court, for sixty days previous to such term of the court.

Petitioner to be exempted, &c. from arrest if he file bond.

SECT. 78. If at the time of filing his petition and schedule as aforesaid, or at any time thereafter, such petitioner shall file a bond, payable to the state of Indiana, in a penal sum not less than double the value of the property specified and set forth in his said schedule, with sureties, to be approved by the clerk of said court, before filing the same, and conditioned that such petitioner will well and truly assign, transfer, convey, and deliver all his property, effects, and things in action, for the benefit of his creditors according to law, to the trustee or trustees to be appointed by the court; such petitioner shall not be liable from the time of the filing and approval of the said bond, to be arrested and held in custody, by virtue of any process issued on any judgment, decree, suit, proceeding, or liability, in respect of which he would be exonerated from imprisonment if he had obtained his final discharge as an insolvent debtor, until the final determination of his said petition, except in case of the insufficiency of his bond or sureties, as determined by the court, as hereinafter provided.

Clerk certify filing of bond to officer having petitioner in custody.

SECT. 79. The clerk of the court with whom such bond is filed shall certify the fact of the filing of such petition and schedule, and the filing and approval of such bond; which certificate, sealed with the seal of said court, and produced by said petitioner to the officer entrusted with the service of such process, shall exempt said petitioner from arrest thereon as aforesaid; and such officer shall return such process, endorsing thereon the reason why the same was not executed.

Creditor may move to set aside bond, &c.

SECT. 80. At any term of the court after the filing and approval of such bond as aforesaid, any creditor of such petitioner may move the court for an order, declaring that such petitioner is not exempted from arrest and imprisonment as aforesaid, on the ground of the insufficiency of such bond, or of the sureties

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named therein; and if it shall appear to the satisfaction of the court that such bond or the sureties are insufficient, they shall make such order, unless such petitioner shall file a sufficient bond, with sureties to be approved by the court. ARTICLE 3. Order of court thereon.

SECT. 81. Such order, declaring that such petitioner is not exempted from arrest, shall be deemed to annul and cancel the certificate aforesaid, and such petitioner shall be liable to arrest and imprisonment, as if such certificate had not been issued or such bond filed. Effect of such order.

SECT. 82. If at the time of filing his said bond as aforesaid, such petitioner shall be in prison on process issued on any judgment, decree, or proceeding, founded on any debt or liability, in respect of which he would be exonerated from imprisonment by virtue of the order of the court for his discharge as an insolvent debtor, according to the provisions of this article; such petitioner, upon complying with the provisions of the next two following sections, may be discharged from such arrest until the final determination of his said petition by the court. If in prison, petitioner may be released, &c. on filing bond.

SECT. 83. The petitioner thus in prison on process as aforesaid, shall give five days' previous notice to the plaintiff, complainant, or relator, his agent, or attorney in the judgment, decree, suit, or proceeding in which such process has been issued, to appear at the clerk's office before the clerk with whom such bond is filed, and show cause, if any he can, why a supersedeas to such process shall not issue; or if no person can be found in the county upon whom to serve such notice, such notice shall be posted up for ten days in the proper clerk's office. Five days' notice to creditor of application for discharge.

SECT. 84. At the time appointed for showing cause, the person thus notified, his agent, or attorney, may appear and show to the clerk that such petitioner has not complied with the provisions of this article, or that his said bond or sureties are insufficient; or he may examine such petitioner under oath, touching his said schedule, property, and debts; and if it shall satisfactorily appear that he has not complied with the requisitions of this article, or his bond or sureties are insufficient, or that he has delivered a false and fraudulent schedule, such clerk shall refuse to issue a supersedeas; but if no sufficient cause as above specified is shown against the issuing of a supersedeas, the same shall be issued by the clerk, duly attested by him, and sealed with the seal of said court, and upon the production of the same to the officer in whose custody he is held, such officer shall release such petitioner from his said imprisonment. Creditor may show cause against such release.

SECT. 85. In any case in which such clerk shall grant, or refuse, a supersedeas, the person injured or affected thereby may move at the next term of the circuit court for such supersedeas to issue, or that the same be annulled and set aside, as the case may be; and the court shall summarily hear and determine the same, and may direct such supersedeas to issue, or may refuse or annul and set aside the same, as may appear just and right. Court may hear the matter on motion.

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Petitioner may file additional bond.

SECT. 86. On appearing to show cause before said clerk or the court, such supersedeas shall not be refused, annulled, or set aside, on the ground that the bond of such petitioner or his sureties are insufficient, if he shall file to the satisfaction of the clerk or court, as the case may be, the requisite bond, with good and sufficient sureties.

Petitioner in custody may prosecute petition although he may not be able to give bond in certain cases.

SECT. 87. If at the time of filing his petition and schedule, such petitioner shall be in prison in any suit or proceeding, founded on any contract or liability, in which he would be exempted from imprisonment upon his final discharge, according to the provisions of this article, and such petitioner shall be unable to give bond, he may nevertheless prosecute his said petition to final hearing without giving such bond, and be discharged as an insolvent, if he shall well and truly deliver up, assign, transfer, and convey all his property, of every kind and description, to the trustees appointed by the court, and shall in all other respects comply with the provisions of this article, and satisfy such court that he is entitled to such discharge; but such petitioner shall, in no case, unless he give bond as herein required, be exempted from arrest, or discharged from custody, by virtue of instituting any proceedings under this article, until he shall obtain his final discharge as an insolvent debtor.

After publication court shall proceed to hear petition.

SECT. 88. At the term of the court specified in such publication, if it shall appear that the same was published as herein required, at least sixty days prior to said term, such court shall proceed at such term to hear the application of said petitioner, and the proofs and allegations of all or any of the creditors who may appear to show cause against granting the prayer of said petition.

Cause may be continued.

SECT. 89. The court before which such petition may be pending, may continue the hearing thereof, or the trial of any issue connected therewith, for any good cause shown by the petitioner, or by any other person interested therein.

Creditor may file objections.

SECT. 90. Any creditor opposing the petition of said petitioner may, on or before the second day of said term, file with the court a specification in writing of the grounds of his objections to the discharge of such petitioner; and if the specifications shall contain any allegations of fraud, or of any matters or facts proper for the decision of a jury, either party may demand a jury, as in the case of other trials before said court, to try the same; and the verdict of such jury, subject to be set aside, and a new trial awarded by the court, as in other cases, shall be conclusive in the premises.

Jury trial.

Insolvent may be examined on oath on such trial.

SECT. 91. The court may decide upon the matters contained in such specification, with the consent of the parties, without the intervention of a jury; and upon any such trial before the court or jury, the insolvent may be examined on oath, at the instance of the creditor, touching his estate or debts, or touching any matter contained in his petition or schedule, and may be required to state any changes which may have taken place in his property or debts since the making of his schedule; and par-

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ticularly whether he has collected any debts or demands, or made any transfers of any part of his property, debts, or demands, or made any contract relating thereto, since the making of his said schedule; and such examination of such petitioner shall not prevent the creditor from contradicting or impeaching, by other competent testimony, any evidence given by such petitioner. ARTICLE 3.

Any creditor may appear and examine debtor generally.

SECT. 92. The creditors, or any creditor, may appear, and without alleging or specifying any particular ground or grounds of objection to the discharge of such petitioner, may examine him before the court, under oath, touching his estate, debts, and circumstances, and touching any matter specified in his said petition and schedule.

Petition may be dismissed.

SECT. 93. If such petitioner shall, at any time, during the pendency of his said petition, fail to comply with any order or requirement of the court in the premises, or with any of the requisitions of this article, the court may dismiss his said petition.

Dismissed on failure to prosecute, for fraud, &c.

SECT. 94. If such petitioner shall at any time fail duly to prosecute his said petition, or if it shall appear to the court on the final hearing of such cause, or otherwise, that such petitioner has been guilty of any fraudulent conduct, or has in any manner failed to comply with any of the provisions of this article, whereby his creditors may be injured, the court shall not discharge such petitioner, but shall dismiss his said petition.

When so dismissed, to be at petitioner's costs.

SECT. 95. Whenever for any cause of fraud, non-compliance with the provisions of this article, or for any default of such petitioner, his said petition is dismissed, it shall be dismissed at his own proper costs.

Payment of costs.

SECT. 96. All costs of such proceedings shall be paid by such petitioner, subject to such order or judgment as the court, in its discretion, may make, except such costs as may be made by any person contesting his claim to be discharged, and who shall fail therein; in which case the person thus contesting shall pay the costs occasioned by such contest.

When not entitled to a discharge.

SECT. 97. If it shall satisfactorily appear, that in contemplation of his becoming insolvent, or of his petitioning for a discharge as an insolvent, under the provisions of this article, or knowing of his insolvency, such petitioner has made any assignment, sale, or transfer, either absolute or conditional, of any part of his estate, real or personal, or of any interest therein, or has confessed any judgment with a view to give a preference for an antecedent debt to any creditor, he shall not be entitled to a discharge under this article.

Not entitled unless he account for moneys, &c. since schedule filed.

SECT. 98. If it shall appear by competent proof, on any trial or hearing of such petition, or otherwise, that such petitioner has collected any debts or demands, or realized any moneys, benefit, or advantage, from any sale, transfer, or disposition, absolute, conditional, or otherwise, of any of his property of any kind or description, since the making of his schedule annexed to his petition, his discharge shall not be granted to him until he

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shall have paid to the trustees appointed by the court, the full amount of the debts and demands collected by him, and also paid, assigned, or delivered to his trustees, the full value realized or to be realized from any property by him sold or transferred, except such part of said moneys, debts, demands, and property, as shall appear to said court to have been necessarily expended by such petitioner for the support of himself or family, and for defraying the expenses, costs and charges of his said application for the benefit of the insolvent laws.

If entitled to be discharged, court shall make an order that he assign his property to trustees.

SECT. 99. If satisfied that such petitioner is entitled to his discharge, the court shall make an order, that he forthwith execute an assignment of all his property, real and personal, to such trustees as the court shall name and appoint, not exceeding three in number, and that he deliver to said trustees all his personal property, and money on hand, and all deeds, books, contracts, agreements, bills, notes, obligations, accounts, transcripts, securities, and all other evidences relating to his property, so far as the same can be delivered.

Trustee to give bond.

SECT. 100. Such trustee or trustees shall give bond, payable to the state of Indiana, in such penalty as the court shall direct, with sufficient sureties, to be approved by the clerk of said court, conditioned for the faithful discharge of their duties as such trustees, according to law; and upon such trustee or trustees filing such bond in the clerk's office, duly executed, and satisfying the court that the assignment and delivery required in the last preceding section has been made, in compliance with the order of the court, the court shall grant to such petitioner a discharge from imprisonment, which shall have the effect declared in the next following section.

Discharge.

To be entered on the order book.

SECT. 101. Every such discharge shall be entered upon the order book of the court making the same, and shall exonerate the insolvent to whom it shall be granted, from any arrest or imprisonment thereafter, in any suit, or upon any proceeding founded upon any debt or liability whatever, contracted by him previous to the execution of the assignment of his estate, as herein directed, or in any suit or proceeding founded upon any liability incurred by him, by making or endorsing any promissory note, or bill of exchange, previous to the execution of such assignment, or incurred by him in consequence of the payment by any party to such bill or note, of the whole or any part of the money secured thereby, whether such payment be made prior or subsequent to his execution of such assignment.

Effect of such discharge.

Discharge not to exempt property from payment of his debts, nor to affect any lien, &c.

SECT. 102. Nothing contained in this article shall exempt any property owned or acquired by said insolvent, after his discharge as aforesaid, from the payment of any debt, demand, liability, judgment, or decree, contracted or incurred at any time previous to such discharge, but the same, or so much thereof as may remain unpaid or unsatisfied, and any judgment or decree afterwards obtained thereon, shall remain and be valid and effectual against all the property of such insolvent, owned or acquired after such assignment; and any lien acquired

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by any mortgage, defeasible deed, judgment, or decree, shall not in any manner be affected by such discharge. ARTICLE 3.

SECT. 103. Whenever any insolvent petitioner shall be in custody at the time that such order for his discharge is made, on any process on any judgment, or in any suit or proceeding in respect of which he is exonerated from imprisonment, by the force and effect of such discharge, he shall be released and discharged from such custody, upon producing to the sheriff, or other officer in whose custody he is held, a copy of such order of discharge, duly certified by the clerk of said court. If in custody, to be released.

SECT. 104. If the court shall not grant such petitioner his discharge, on the final hearing thereof, or shall dismiss his said petition at any stage of the proceedings thereon, and he shall have been, upon the filing of his petition, schedule, and bond, discharged from custody on any process, new process may issue, and he be arrested and held in custody thereon, as if no such proceedings had been instituted. Effect of dismissal of petition.

SECT. 105. If any sheriff, or other officer, shall be prosecuted for failing to arrest any such petitioner, or for the escape of any person liberated or discharged from custody, under the provisions of this article, he may give this article, and the special matter in evidence, under the plea of the general issue. Sheriff or other officer may defend under this article.

SECT. 106. Any person aggrieved or injured by such petitioner's failure to comply with any of the requirements or conditions of his bond, may have his remedy thereon, to the value of any property of every kind and description, whether real or personal, in possession, or choses in action, retained or not assigned, delivered, transferred, or conveyed by such petitioner, if the claim, debt, or demand of such aggrieved or injured person amount to so much, or if not, then to the value of such property so retained, or not assigned, delivered, transferred, or conveyed. Suit on petitioner's bond. Measure of damages.

SECT. 107. Any other person aggrieved or injured, as specified in the last preceding section, may in like manner bring his action on such bond, and recover judgment, as in said section provided; or he may proceed by writ of scire facias on such first judgment, for his remedy to recover the amount to which he may be entitled, according to the foregoing provisions and restrictions. Further suit by scire facias.

SECT. 108. Every discharge granted to any insolvent petitioner under this article, shall be declared void in each of the following cases: Discharge may be declared void.

1. If such insolvent shall have wilfully sworn falsely in his affidavit annexed to his petition, or upon his examination in relation to any material fact concerning his estate, or debts, or to any other material fact. For perjury.

2. If he shall have retained any part of his estate or property, which he should have assigned or delivered to the trustees, for the benefit of his creditors. For retaining property.

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For secreting property.

3. If he shall have secreted any part of his estate or property, or any books, writings, or documents relating thereto, with intent to defraud his creditors.

Fraudulent concealment.

4. If he shall have fraudulently concealed the names of any of his creditors, or the amount of any sum due to any of them.

Arrangement with creditor.

5. If, in order to obtain his discharge, he shall have paid or secured the whole or any part of the debt or demand of any creditor, or have given any gift or reward to any creditor to abstain or desist from opposing the discharge of such insolvent.

For any fraud.

6. If he shall have been guilty of any fraud whatever, contrary to the true intent and meaning of this article.

Limitation.

SECT. 109. At any time within three years after such discharge has been granted, any person interested may file his petition or application in writing, in the court granting such discharge, setting forth any of the causes embraced in the last preceding section, for declaring such discharge void.

Ten days' notice to set aside such discharge.

SECT. 110. At the next or other term after filing said petition, and at least ten days' notice of the pendency of said petition or application having been given, by summons, to said insolvent, such court shall proceed to hear and determine the same; and on the request of either party, a jury shall be impanneled, as in other cases, to try the matters and things in said petition or application contained; and if the court or jury trying the same find that said insolvent was guilty of perjury, or of any fraudulent conduct with reference to his property, or obtained his discharge by any illegal or fraudulent means, as may be alleged in such petition, the court shall give judgment, declaring null and void such insolvent's discharge, so far as the same, in any way or manner, exempted his person from execution.

Annulling the discharge shall not affect trustees.

SECT. 111. Such judgment declaring such discharge null and void, shall not supersede or annul the appointment of trustees of such insolvent's estate, nor make void, or in any way affect, the assignment of his property for the benefit of his creditors; but such trustees shall proceed, in all respects, in the performance of their trusts, as if such judgment had not been rendered.

Assignment shall vest in trustees the interest of the insolvent.

SECT. 112. The assignment of his property, as hereinbefore required, made by such petitioner to the trustee or trustees appointed by the court, shall vest in such trustees from the time of such assignment, all the right, claim, title, and interest of such petitioner, at the time of executing the same, in any estate or property, real or personal, whether such interest be legal or equitable; and all rights, credits, debts, claims, choses in action, accounts, and demands, in any such assignment specified, and to their successors, and the same shall also pass to their assigns as fully and completely as the said insolvent could himself assign, alien, convey, confirm, transfer, or deliver the same; but

Contingent interest.

no contingent interest shall pass to the trustees by virtue of any such assignment, unless the same shall become vested before the final execution, adjustment, and settlement of their said trusts; or if such execution, adjustment, and settlement shall be

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completed in less than three years from the time of such assignment, and such contingent interest shall have become vested within three years, in which case it shall pass to said trustees in the same manner in which it would have vested in such insolvent if no assignment had been made by him; and the same shall be disposed of by such trustees for the benefit of his creditors as his other property.

Two assignments if necessary.

SECT. 113. If necessary, said insolvent shall execute two assignments, one of his real property, whether legally or equitably held, and the other of his personal estate; which latter may be executed in short on, or annexed to his schedule.

Real property assigned by deed, which shall be recorded.

SECT. 114. The assignment of his real property shall be by deed, duly executed as other conveyances of real estate, and shall be subject to the laws of this state requiring conveyances of real estate to be recorded.

Oath of trustees

SECT. 115. The trustee or trustees shall each take an oath that he will faithfully discharge the duties of said trust to the best of his skill and understanding.

Powers, &c., of trustees.

SECT. 116. All trustees appointed according to the provisions of this article, are hereby declared trustees of the estate of the insolvent, for the benefit of his creditors, and shall be vested with all the powers and authority specified in this article, and subject to the control, obligations, and responsibilities of law as such trustees.

Provisions as to one trustee.

SECT. 117. When only one trustee shall be appointed, all the provisions herein contained in reference to several trustees shall apply to him; and where there are more trustees than one appointed, the debts and property of the insolvent may be received by any one of them; and where more than two trustees are appointed, every power and authority vested in trustees may be exercised by any two of them.

Surviving trustee.

SECT. 118. The survivor or survivors of any trustees shall have all the powers and rights given by this article to trustees. All property, money, and effects in the hands of any trustee at the time of his death, removal, or becoming incapable of executing the trust, shall be delivered to the remaining trustee or trustees, who may demand the same or sue therefor, if there be any; or if not, then to the successor of the trustee so dying, being removed, or becoming incapacitated, who may in like manner, sue for or demand the same.

Enumeration of the powers and duties of trustees.

SECT. 119. The said trustees shall have power,

To sue, &c.

1. To sue in their own names or otherwise, and recover, all the estate, debts, and things in action, belonging or due to such insolvent, in the same manner and with the like effect, as such insolvent might or could have done if no such assignment had been made.

To take the estate of the insolvent.

2. To take into their hands all the estate of such insolvent, whether assigned or delivered to them, or afterwards discovered, and all books, titles, vouchers, and securities relating to the same.

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To sell.

3. From time to time, as may be necessary and expedient, to sell at public auction all the estate, real and personal, vested in them, or which shall come into their hands, and convey, transfer, and deliver the same, after giving at least twenty days' notice, by at least three advertisements, set up in public places in the county where such sale is to take place, and by also publishing the same, if ordered so to do by the court, for three weeks in a newspaper printed in such county, if there be one.

To allow a credit thereon.

4. To allow such credit on the sale of property by them as they shall deem reasonable, in no case to exceed eighteen months, unless specially directed otherwise by the court; and on the sale of personal property, not to exceed twelve months.

To execute conveyances, &c.

5. On the sale of real estate, to execute the necessary agreements and conveyances; and on the sale of personal property, to execute all the requisite receipts, acquittances, and bills of sale.

To redeem mortgages, &c. and sell property subject thereto.

6. To redeem all mortgages and conditional contracts, and all pledges of personal property, and to satisfy any judgments or decrees which may be an incumbrance on any property of the insolvent; or to sell such property subject to such mortgages, contracts, pledges, judgments, or decrees.

To settle accounts, &c.

7. To settle all matters and accounts between such insolvent and his debtors or creditors, and to examine any person touching such matters and accounts on oath, to be administered by any of such trustees.

To adjust controversies, &c.

8. To fully adjust and determine all controversies which may arise in the settlement of such insolvent's affairs by suits at law or in equity, or by arbitration, as such trustees may deem most advisable, and to compound or compromise with any person indebted to such insolvent.

To submit cases to the court.

9. To submit upon an agreed case to the summary decision of the court, any controverted question relating to any matter of indebtedness, damages, interest, payment, set-off, or accord and satisfaction; and the decision of such court thereon shall be final between the parties, reserving to each the right of appeal, or of prosecuting his writ of error in the supreme court.

Entitled to set-off, &c.

10. Such trustees shall be entitled to any matter of set-off, payment, or accord and satisfaction, which would have been valid in favor of said petitioner in case no such assignment had been made, against any claim, debt, or demand of any of his creditors.

When set off may be allowed.

SECT. 120. Where mutual credit has been given by any insolvent and any other person, or where mutual debts have subsisted between such insolvent and any other person, the trustees may allow such credits or set off such debts and pay the proportion, or receive the balance due; but no payment, set-off, or accord and satisfaction, made to or with the insolvent after his assignment shall be valid against any debt, claim, or demand owing to such insolvent.

After assignment, insol-

SECT. 121. After the assignment, as aforesaid, of his property and estate, such insolvent shall be incapable, in his own

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name and for his own benefit, of maintaining any suit or action respecting any of his property or estate, owned or claimed by him prior to such assignment; and all suits and actions instituted by him prior to his said assignment, and which shall be pending at the time thereof, shall not abate thereby, but shall be continued and prosecuted in his name; and if recovery therein be had, the avails thereof shall pass into the hands of his trustees for the payment of his debts.

Vent cannot maintain action, &c.

SECT. 122. The trustees, immediately on their appointment, shall give notice thereof in some newspaper printed in such county if one be printed therein; or if no such paper be printed therein, then by notices set up in at least five public places in such county, one of which shall be the office of the clerk of the circuit court; and in such notice shall require,

Trustees to give notice of their appointment.

1. All persons indebted to such insolvent, on or before a certain day, to pay all debts, dues, and demands by them owing respectively, to such trustees, as the assignees of such insolvent.

2. All persons having in their possession, any property, moneys, or effects, to deliver the same to said trustees, on or before the day so appointed.

SECT. 123. Notwithstanding any such notice as required in the last preceding section, such trustees may sue for and recover any property and effects of the debtor, and any debts or demands due to him, at any time before the expiration of the time appointed in such notice for the delivery or payment thereof, if due or recoverable.

May institute suits.

SECT. 124. The trustees shall, as speedily as possible, consistent with the interest of the parties, convert the estate, real and personal, of such insolvent, into money; they shall keep a regular account of all moneys received by them as trustees, to which every creditor or other person interested therein, shall be at liberty, at all reasonable times, in the presence of any of such trustees, to have recourse, and to inspect and examine the same.

Convert the estate into money.

SECT. 125. Said trustees, within one year from the time of their appointment, unless a longer term shall be granted by leave of the court, shall give notice, by publication in some newspaper printed in the county where the discharge of such insolvent was granted; or if none is printed therein, then in some county nearest thereto in which a newspaper may be printed, and also by setting up a similar notice in three of the most public places in the county first above mentioned, the clerk's office of the circuit court thereof being one; which notice shall be published for four consecutive months, at least once in each week, and shall require the creditors of such insolvent to present their claims, for adjustment and allowance, on a day or days, and at a place therein specified; which day shall not be less than one, nor more than two months after the completion of such notice.

Notice to creditors to present their claims.

SECT. 126. Said trustees may adjourn their meetings from day to day, when met as specified in the last section; and at

Trustees may adjourn their meetings.

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such meeting or adjourned meeting, all accounts and demands for and against the estate of such insolvent, may be fairly adjusted and allowed, as far as the same can be ascertained, and the amount of moneys in the hands of the trustees declared.

Creditor failing to exhibit his debt.

SECT. 127. If any creditor shall not exhibit his debt, claim, or demand against such insolvent at their meeting at the time and place appointed in such notice for the adjustment and allowance of debts, claims, and demands, or at some one of their adjourned meetings for that object, before any distribution is made, such creditor shall not be entitled to any share in the distribution of the avails of the property and effects of such insolvent.

Expenses to be paid first.

SECT. 128. Out of the moneys in their hands, such trustees may first deduct all the necessary disbursements and expenditures made by them in the discharge of their duty, and in the payment of valid liens, entitled to priority, on the property of such insolvent, and such a sum as a compensation for their services as the court, at any previous term, may have allowed.

Residue to be distributed.

SECT. 129. They shall distribute the residue of the moneys in their hands, among all those who have exhibited their debts, claims, dues, or demands, as creditors, and whose debts, claims, dues, or demands shall have been ascertained, in proportion to their respective amounts, and without giving any preference to any debts, claims, or demands, except moneys owing by him as executor, administrator, guardian, or trustee; and if there be not sufficient to pay his debts owing as executor, administrator, guardian, or trustee, then a distribution thereof shall be made among such debts in proportion to their respective amounts.

Further dividends until the whole is distributed.

SECT. 130. If the whole of said debtor's estate shall not be distributed on the first dividend, said trustees shall proceed, six months thereafter, to apply and make a further dividend of any money which may come into their hands, among said creditors in proportion to their respective claims, according to the principles established in the last two preceding sections; and they shall so proceed every six months thereafter until they shall have received and collected all the moneys which can be derived from the estate of said insolvent.

Debts not due shall share in the distribution.

SECT. 131. Every person to whom an insolvent shall be indebted on a valuable consideration, for any sum of money not due at the time of distribution, but payable afterwards, shall be entitled to receive his proportion with other creditors, after deducting therefrom a rebate of legal interest upon the share distributed to him, for the unexpired time of such credit, unless his demand is drawing interest, when no such deduction shall be made.

Trustees may retain on account of claims not established.

SECT. 132. If at the time any dividend is made, any suit or action shall be pending, in which a debt, claim, or demand against such insolvent may be thereafter established, the trustees may retain in their hands the proportion which would belong to such debt, claim, or demand, if established, and the necessary costs and expenses of such suit or action, to be applied to the pay-

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ment of the same, if established, or if not, to be distributed among the creditors at the next other dividend. ARTICLE 3.

Unclaimed dividend to be distributed.

SECT. 133. If any dividend which shall have been declared, shall remain unclaimed by the person entitled thereto for one year after the same was declared, it shall be considered as relinquished by such person to the other creditors, and the trustees shall distribute it among them at any subsequent dividend.

Trustees to return an account.

SECT. 134. Within twenty days after any dividend made by any trustees, they shall render and file with the clerk of the proper circuit court an account of all their proceedings in the premises; stating,

1. Their disbursements, necessary expenses, and the dividends made by them.

2. The names and residences of the creditors to whom dividends, credits, or any set-off were made or allowed; and the names of those who have actually received their dividends.

3. The claims, debts, and demands owing to or due from the insolvent, settled or adjusted by suit, arbitration, or compromise.

4. The property, moneys, things in action, and effects of the insolvent in their hands, and the value and situation of such property.

And such trustees may at any time be compelled by a rule of the proper circuit court to render such account on oath, on the application of the debtor, or of any creditor.

Final account rendered.

SECT. 135. When such trustees shall have made a full and complete distribution of the estate of the insolvent, they shall make out and submit to the circuit court a complete and succinct statement and account of all moneys received and paid out by them; of all property sold, and the amount for which, and to whom the same has been sold; making such reference to their previous reports, if any have been made, as may be necessary, having first given six weeks' notice of their intention to make a final report and settlement, by setting up in the clerk's office a notice to that effect.

Allowance of report of trustees in final settlement.

SECT. 136. If no good cause is shown by the insolvent, or by any creditor, why such report should not be allowed, and a final settlement of the estate of such insolvent be declared, the court may allow such report, and declare such estate settled; but notwithstanding such allowance and declaration of settlement being made by the court, such trustees, or any of them, shall be subject to any liabilities which they, or any of them, may have at any time incurred.

Surplus, if any, paid to insolvent.

SECT. 137. If, after the settling of the estate of any person discharged as an insolvent debtor, and after paying and discharging all his debts entitled to a dividend, any surplus shall remain in the hands of the trustees, the same shall be paid to such debtor or his proper representatives.

Exceptions to report of trustees.

SECT. 138. The insolvent, or any of his creditors, or other person interested in his estate, or affected by any proceedings contained in any report of such trustees, may except to such

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report in writing, which shall be submitted to the court for their examination, and the court shall make such order or decision thereon as may be right and proper.

Interlocutory decision may be appealed, &c.

SECT. 139. Whenever any authority shall be exercised by a circuit court pursuant to the provisions of this article, and an order or decision shall be made by such court, which shall be final, respecting such particular matter, an appeal to the supreme court may be taken, or a writ of error prosecuted, that such order or decision may be examined and corrected; but such appeal, or writ of error, shall not operate as a stay of any proceedings relating to such matter, until a supersedeas shall be issued by order of the supreme court, or a judge thereof, and such bond given as such court or judge shall direct.

Trustees subject to the order of the court.

SECT. 140. Such trustees shall be subject to the order of the circuit court by which they were appointed, upon the application of any creditor, or of any insolvent, in respect to whom they were appointed, in relation to the execution of any powers and duties confided to them; and they may be removed by such court for any good cause shown, twenty days' notice of the motion to remove any such trustee having been given to him in writing, specifying the particular ground or grounds why he ought to be removed.

Court may fill vacancies in trustees, &c.

SECT. 141. Whenever any sole or surviving trustee shall be removed, shall die, or become incapacitated to perform his duties, the court which originally appointed such trustee may appoint another in his place, who shall, in all respects, have the like powers and authority, and be subject to the same control, obligations, and responsibilities.

Trustee may renounce.

SECT. 142. Any trustee appointed pursuant to the provisions of this article, who shall be desirous of renouncing the trust vested in him, may apply to the court from which his appointment was received, for leave to resign the same, having first given notice, by setting up the same in three of the most public places in the county, one of which shall be the office of the clerk of the circuit court, therein requiring all persons interested to show cause why his renunciation of said trust should not be accepted.

Trustee wishing to renounce must file an account, &c.

SECT. 143. Such application by the trustee shall be accompanied by a full, true, and just account of all the transactions of such trustee in that character, and particularly of the property, moneys, things in action, and effects of the insolvent received by him; and all disbursements, allowances, and payments made, whether to creditors or otherwise; and also of the remaining effects and estate of the insolvent in respect to whose estate he was appointed such trustee, within his knowledge, and the situation of the same; and to such account he shall annex an affidavit, sworn to and attested before the clerk of the circuit court, that said account is, in all respects, just, true, and complete, to the best of his knowledge and belief.

When and where filed.

SECT. 144. Such application and account shall be filed in the clerk's office of the proper circuit court, at least ten days

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ARTICLE 3.

prior to the first day of the term at which the same is to be heard and examined.

Hearing of the application.

SECT. 145. The court, upon being satisfied that notice has been given, and such application and accounts filed as herein required, may, at such term or any subsequent term to which such hearing and examination may be continued, proceed to hear the proofs and allegations of the parties.

Allowance of application to renounce.

SECT. 146. If it shall appear to the court that the proceedings of such trustee, in relation to his trust, have been fair and honest, and particularly in the collection of the property and debts of the insolvent vested in him; and if such court be satisfied, for any reason, that it is proper that such trustee should be discharged from the further execution of the duties of his trust, and that such duties can be executed by another trustee without injury to the creditors or estate of the insolvent; and if no good cause to the contrary appear, such court may grant an order allowing such trustee to renounce his appointment, and to assign the property and effects of the insolvent to his successor.

Successor to be appointed and assignment executed.

SECT. 147. The court shall immediately appoint such successor or successors; and the resigning trustee shall execute the requisite assignment to him or them as the case may be.

Renouncing trustee to deliver effects, &c.

SECT. 148. Upon satisfying the court that such assignment has been duly made, and that the property and effects belonging to such trust, capable of delivery, together with the books, documents, and vouchers relating thereto, have been duly delivered, so far as said delivery is proper or necessary, to the successor or successors of such trustee, such court shall grant to the trustee so applying as aforesaid, an order that he be discharged from his trust.

Discharge of such trustee.

SECT. 149. Upon such order being granted, such trustee shall be discharged from the trust reposed in him, and his power and authority shall thereupon cease; but he shall, notwithstanding, remain subject to any liability which he may have incurred, at any time previous to the granting of such order, in the management of his trust

New assignment recorded.

SECT. 150. Such new assignment shall be recorded in like manner as the original assignment of such insolvent is required to be recorded.

Costs.

SECT. 151. The expense of all proceedings in relation to such renunciation and assignment, shall be paid by the trustee making the application.

Clerk to file papers, &c., but not to make record. Transcript, how made.

SECT. 152. All the papers relating to the proceedings under the provisions of this article, shall be filed and preserved by the clerk of the circuit court, but he shall not make any complete record thereof; and if any person entitled thereto require a transcript of the same, or of any of them, or of the minutes and entries of the proceedings of the court, such clerk shall make a transcript thereof, which, duly certified by such clerk, and sealed with the seal of his court, shall, in all courts, be taken and received as if the same were taken from a final record thereof.

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CHAPTER 30.

OF THE TITLE TO PROPERTY BY WILL OR TESTAMENT, OF THE RIGHTS, POWERS, AND DUTIES OF EXECUTORS AND ADMINISTRATORS, AND THE DISTRIBUTION OF THE PERSONAL ESTATE OF INTESTATES, AND OTHER MATTERS RELATING THERETO.

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Who may devise, &c.

SECTION 1. All persons, except married women, infants, idiots, and persons of unsound mind, may devise, by a last will and testament, their lands, tenements, and hereditaments, or any interest therein, descendable to their heirs.

To whom made.

SECT. 2. Such devise may be made to any person or corporation capable by law of holding real estate.

To whom void devise shall go.

SECT. 3. Any interest in real property devised to any person or corporation incapable in law of holding real estate so devised, shall descend to the heirs of the testator; or if he have no heirs competent to take the same, the same shall go to the residuary devisees, if any such are named in said will, capable of holding such estate or interest.

Devise of all real estate, how construed.

SECT. 4. Every devise that shall be made by a testator, in express terms, of all his real estate, or in any other terms denoting his intent to devise all his real property, shall be construed to pass all the real estate which he was entitled to devise at the time of his death.

General devise, how construed.

SECT. 5. Every devise of lands shall be construed to convey all the estate of the devisor therein, which he could lawfully devise, unless it shall manifestly appear by the will that the devisor intended to convey a less estate.

Estate per autre vie, devisable, &c.

SECT. 6. Any estate per autre vie shall be devisable by will executed as in other cases; and if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if the same shall come to him by reason of a special occupancy, as assets by descent, as in the case of lands descended and held in fee simple; but if there be no special occupant thereof, it shall be assets in the hands of the executor or administrator of the testator or intestate that may have had the estate thereof.

Who may bequeath personal estate.

SECT. 7. Every person capable of devising real estate as above provided, may, by his last will and testament, bequeath and dispose of all his personal estate remaining at his decease, and all his right thereto and interest therein; and all such per-

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sonal estate not disposed of by the will shall be administered by the executor in like manner as the estate of an intestate.

Will, when revoked by marriage and birth of child.

SECT. 8. If after the making of any will disposing of his whole estate, the testator shall marry, and have issue of such marriage, born either in his lifetime or after his death, and the wife or the issue of such marriage shall be living at the death of the testator, such will shall be deemed revoked, unless provision shall have been made for such issue by some settlement, or unless such issue shall have been provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence shall be received for the purpose of rebutting the presumption of such revocation.

Will of unmarried woman revoked by her marriage.

SECT. 9. If after the making of a will by an unmarried woman, she shall marry, such will shall be revoked by her subsequent marriage.

How far birth of a child, &c. shall revoke a will.

SECT. 10. If after the making of a will a child shall be born to the testator, either in the lifetime or after the death of the testator, and no provision be made in the will for such a contingency, by any devise or settlement in favor of such child, such birth shall not operate as a revocation of such will, farther than to entitle and allow such child to take and receive such portion of the estate of the testator as shall be equal to the share which would have descended or been distributed to such child if his parent had died intestate.

The share of such child, how taken.

SECT. 11. The portion which such child shall be entitled to recover and receive, as provided in the preceding section, shall be taken and recovered from the estate of the testator, and from the parts of the devisees and legatees, as follows:

1. If there shall be any of the real or personal estate of the testator, which shall not have been devised or bequeathed by his will, and there shall be other children, or the descendants of other children, capable of taking the same by descent, and a widow, or any of them, the share of such child, which it would take by descent or by distribution with such widow and other heirs, or any of them, shall be applied towards the payment of the portion of such child; and if there be no other children, nor the descendants of other children, the whole of such part of the real or personal estate, thus undevised or unbequeathed, or so much thereof as may be necessary, shall be applied to the payment and discharge of such portion.

2. If the same shall be insufficient to pay and discharge such portion, then any part of such estate which would have gone to the residuary legatees of the testator, other than the widow or any children of the testator, or so much of such part of the estate as may be necessary, shall be taken and applied towards the payment and discharge of such portion.

3. If such portion shall not be thus paid and satisfied, the same, or the balance thereof, shall be taken equally from the devisees and legatees of the testator, in proportion to the value of what they would respectively be entitled to receive under the will.

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Court may apportion such share in certain cases.

SECT. 12. The court having jurisdiction thereof, may, however, in the case of specific devises and bequests, make such apportionment of the portion of such child among all the different devisees and legatees as may be found necessary, in order to give effect to the intention of the testator, as to any part of his estate, which shall pass under a specific devise or bequest by his will; and such court may, where manifest injury would be done by any other course, in case of a specific devise, decree such child to take as a tenant in common with the devisee thereof, in proportion to the value of the devise, and the part of the child's portion to be charged on such devise.

Child shall take such share as if devised.

SECT. 13. Such portion of any child shall be adjusted and settled by the proper court, and the payment and delivery thereof ordered in such manner as to the court may seem just and right, and shall be adjusted, paid, and delivered to such child as if the same had been to the same extent, and in the like manner, bequeathed or devised to such child, in the last will of such testator; and until the same is adjusted or secured to the satisfaction of the court, no devisee or legatee shall acquire any disposable or transferable right whatever to any devise or bequest specified in such will.

If the child die.

SECT. 14. If any such child shall die before receiving its portion, without leaving issue, such portion, or so much thereof as shall not have been received, shall pass by such will as if such child had not been born.

Effect of a contract, &c. on the devised estate.

SECT. 15. Where any testator, after the making of his will, shall make a contract, bond, or covenant, for the conveyance of any property devised in such will, and the whole or any part of the purchase money therefor shall remain unpaid to such testator at his death, such disposal or conveyance of such property shall not be deemed a revocation of such devise, either at law or in equity, unless it shall manifestly appear by such bond, contract, or covenant, to be intended as a revocation thereof; and such property shall pass to such devisee, subject to the same remedies for a specific performance thereof, in favor of the person entitled thereto, against the person or persons to whom such devise was made, as might be had in law or equity against the heirs of the testator, if the same had descended to them; and the purchase money due thereon at the death of the testator, when recovered by the executor of such testator, shall be paid over to the person or persons to whom such property was devised.

Charges and incumbrances on devised property.

SECT. 16. A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any contract or covenant, shall not be deemed a revocation of any devise or bequest of such estate previously executed; but the devises and legacies relating thereto shall pass and take effect, subject to such charge or incumbrance.

Case in which testator takes

SECT. 17. If any testator, after having executed a will, devising any lands, tenements, or hereditaments, shall after-

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a new estate, &c.

wards make a conveyance of his interest therein, and shall take back a new estate therein, such new estate shall pass by his will to the person to whom the original estate or interest was devised; unless it shall appear from such will, or by the conveyance of his estate, or interest therein, or by the instrument by the force of which such new estate is taken back, that the testator intended that such conveyance should operate as a revocation of such devise. *

Case of estate partly divested, after devise, &c.

SECT. 18. A conveyance, settlement, deed, or other act of a testator by which his estate or interest in property previously devised or bequeathed by him shall be altered, but not wholly divested, shall not be deemed a revocation of such devise or bequest; but the same shall pass to the devisee or legatee, the actual estate or interest of the testator, which would otherwise descend or pass to his heirs; unless such devise or bequest shall be otherwise revoked, or unless in the instrument by which such alteration is made, the intention is declared, that it shall operate as a revocation of such previous devise or bequest; but if in any case the provisions of the instrument by which such alteration is made are wholly inconsistent with the terms and nature of such previous devise or bequest, such instrument shall operate as a revocation thereof, unless such provisions depend on a condition or contingency, and such condition be not performed, or such contingency do not happen.

When estate devised is taken to pay debts, other devisees, &c. liable to contribute.

SECT. 19. When any estate, real or personal, that is devised or bequeathed, shall be taken in whole or in part from the devisee or legatee, for the payment of the debts of the testator, all the other devisees or legatees shall contribute their respective proportions of the loss to the person from whom the estate is taken, so as to make the loss fall equally on such devisees and legatees, according to the estimated value of the property received by each of them, unless the testator in his will, in making a specific devise or bequest, shall have virtually exempted any devisee or legatee from his liability for the payment of the debts with the others, or shall, by any provision in his will, have prescribed or required any appropriation of his estate, or any part of it, for the payment of his debts, different from that prescribed in this section, in which case the estate shall be appropriated and applied in conformity with the provisions of the will.

Undevised real estate liable to debts before the devised.

SECT. 20. Whenever any part of the real estate of a testator is left undevised, or undisposed of by his will, and his personal estate shall be insufficient for the payment of his debts, the undevised real estate shall be first chargeable with the debts, in exoneration, as far as it will go, of the real estate that is devised, unless it shall appear from the will that a different arrangement of the assets for the payment of his debts was made by the testator, when they shall, for that purpose, be disposed of in conformity with the provisions of the will.

* Land held by a United States' land office certificate may be devised, and devisor having after will made received a patent and died seized and possessed, the legal title passes to the devisee. *Brockway* and another, v. *Doe* ex dem *Nugent*, 5 Blackf. 110.

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ARTICLE 1.

When real estate is devised subject to a mortgage, how discharged.

SECT. 21. Wherever any person shall have devised or bequeathed his estate, or any part thereof, and any of his real estate, subject to a mortgage executed by such testator, shall descend to an heir, or pass to a devisee, and no specific direction is given in the will for the payment of such mortgage, the same shall be discharged as follows:

1. If such testator shall have charged any particular part of his estate, real or personal, with the payment of his debts, such mortgage shall be considered as a part of such debts.

2. If the will contains no direction as to what part of his estate shall be taken for the payment of his debts, and all or any part of his personal estate shall be unbequeathed or undisposed of by his will, such mortgage shall be included among his debts, to be discharged out of such estate unbequeathed or undisposed of.

3. If there shall be no assets for the payment of such mortgage, as above provided in this section, or if the same shall be insufficient, the heir to whom the real estate, subject to such mortgage, shall descend, or the devisee to whom the same shall pass, shall satisfy and discharge such mortgage out of his own property.

The whole estate to be liable for debts.

SECT. 22. Nothing herein contained shall impair or in any way affect the liability of the whole estate of the testator for the payment of all his debts; but the provisions in the previous sections, relative to the adjustment and payment of devises and legacies, shall apply only to the marshalling of the assets, as between those who hold or claim under the will, or as heirs of the testator.

Case of a devisee dying before the testator

SECT. 23. Whenever any estate, real or personal, shall be devised or bequeathed to a child or other descendant of the testator, and such devisee or legatee shall die during the lifetime of the testator, leaving a child or other descendant, who shall survive such testator, such devise or legacy shall not lapse, but the property so devised or bequeathed shall vest in the surviving child or other descendant of the devisee or legatee, as if such devisee or legatee had survived the testator, and died intestate.

Posthumous children, &c.

SECT. 24. When any part of the estate of a testator descends to a posthumous child, or descendants of any devisee or legatee who shall have died before the testator, such part of the estate to which such child or descendants may be entitled shall be considered, to all intents and purposes, as if the same had been devised or bequeathed to such child or descendants in manner and form as the same is herein given to such child or descendants.

Naming any person as executor shall not discharge his debt.

SECT. 25. The naming of any executor in a will shall not operate as a discharge or bequest of any just claim which the testator had against such executor, but such claim shall be included among the credits and effects of the deceased in the inventory; and such executor shall be liable for the same, as for so much money in his hands at the time such debt or demand

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becomes due; and he shall apply and distribute the same in the payment of debts and legacies, and among the next of kin, as part of the personal estate of the deceased.

Discharge of a debt by will not valid as against the creditors.

SECT. 26. The discharge or bequest in a will of any debt or demand of the testator against any executor named in his will, or against any other person, shall not be valid as against the creditors of the deceased, but shall be construed only as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory of the credits and effects of the deceased, and shall, if necessary, be applied in the payment of his debts; and if not necessary for that purpose, shall be paid in the same manner and proportion as other specific legacies.

Purchasers in good faith protected in certain cases.

SECT. 27. The title of a purchaser of any lands or interest therein, in good faith, and for a valuable consideration, from the heirs at law of any person who shall have died seized of real estate, shall not be defeated or impaired by virtue of any devise made by such person of the real estate so purchased, unless the will or codicil containing such devise shall have been duly proved as a will of real estate, and recorded in the office of the clerk of the probate court having jurisdiction, within five years after the death of the testator, except,

1. Where the devisee shall have been within the age of twenty-one years, or insane, or imprisoned, or a married woman, or out of the state at the death of such testator; or,

2. Where it shall appear that the existence of such will or codicil shall have been concealed from or unknown to such devisee,

In which several cases the limitation specified in this section shall not commence until after the expiration of one year from the time such disability shall have been removed, or such will or codicil shall have come into the possession or control of such devisee or his representative, or have been deposited in the clerk's office of the proper probate court.

ARTICLE II.

Of the execution and probate of wills and testaments.

SECTION

28. Wills, how made and attested.
29. How revoked.
30. When and how a former will shall be revived.
31. Nuncupative will.
32. Requisites of such will, and when and how proved.
33. Last two sections qualified as to wills of soldiers and sailors.

SECTION

34. Who may have the will proved, and before whom.
35. Probate, where allowed.
36. Witnesses may be summoned.
37. Person having custody of the will compelled to produce it.
38. May discharge himself on affidavit.
39. Number of witnesses to prove a will.

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SECTION
40. How proved if witnesses dead, insane, or out of the state.
41. How hand writing shall be proved.
42. Devise to a witness how far void, and he compelled to testify.
43. Proofs, &c., shall be written down and recorded by the clerk.
44. Certificate of proof endorsed on the will.
45. Effect of a will so proved, and the record thereof as evidence.
46. Court may admit will to probate after refusal of the clerk.
47. Will proved out of the state.
48. How such will shall be certified.
49. Where such will may be filed, and effect thereof.
50. Letters may issue thereon.
51. How far a foreign will shall be valid.

ARTICLE 2.

Wills, how made.

SECT. 28. No will or testament, excepting such nuncupative wills as are hereinafter mentioned, shall be effectual to pass any estate, whether real or personal, nor to change or in any way to affect the same, unless it be in writing, and signed by the testator or by some person in his presence and by his express direction, and attested and subscribed in the presence of such testator by two or more competent witnesses; and if the witnesses are competent at the time of attesting the execution of such will or testament, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of such will or testament, if it be otherwise satisfactorily proved.*

How revoked.

SECT. 29. No will or testament in writing, nor any clause thereof, except as hereinafter specified, shall be revoked, unless by burning, tearing, cancelling, or obliterating the same with the intention of revoking it, by the testator himself, or by some person in his presence, and by his direction and consent; or by some other will, codicil, or other writing, signed, subscribed, and attested, as required in the foregoing section of this article; and when any such will or testament is burnt, torn, cancelled, or obliterated by any other person than the testator himself, the direction and consent of such testator and the fact of such injury or destruction, shall be proved by at least two witnesses.

When a former will shall be revived.

SECT. 30. If, after the making of any will, the testator shall duly make and execute a second will, the cancelling, destruction, or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation, that it was his intention to revive and give effect to his first will; or unless after such cancelling, destruction, or revocation, he shall duly republish the previous will.

Nuncupative wills.

SECT. 31. No nuncupative will shall be valid where more than the value of fifty dollars is bequeathed; and such will shall be proved by at least two competent witnesses, present at the making thereof, and who shall have heard the testator

*_Held_, that by the statute law of this state, a will devising real estate must be in writing, signed by the testator and attested by two witnesses, in the presence of the testator; and that it may, in the same manner, be revoked.
Held, also, that a will in such case, as well as a revocation, is valid without being sealed. _Doe_ d. _Knapp_ v. _Pattison_, et al. 2 Blackf. 355.

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request those or some of those present to bear witness to such, his last will, or to that effect.

Requisites, and when and how proved.

SECT. 32. Such nuncupative will, to be valid, must have been made in the last sickness of the testator; and the same, or the substance thereof, must, within fifteen days after the same was made, have been committed to writing; and no such nuncupative will shall be proved after six months from the death of the testator, nor until the widow and next of kin of such testator shall first have had reasonable notice of the time and place of proving the same.

Last two sections qualified as to wills of soldiers and sailors.

SECT. 33. Nothing contained in this article shall prevent any soldier, being in actual military service, nor any mariner, being at sea, from disposing of his wages and personal estate, in his actual possession, by a nuncupative will.

Who may have the will proved and before whom.

SECT. 34. Upon the death of any testator, any executor, devisee, or legatee named in his will, and any person interested in the estate or any part thereof, specified in such will, may have such will proved before the proper probate court, or before the clerk of such court when the same, is not in session.

Probate, before whom, and in what county.

SECT. 35. Proof of last wills and testaments may be taken by the probate court or clerk of such court:

1. Where the testator at, or immediately previous to his death, was an inhabitant of such county, whether such testator died in such county or not.

2. Where the testator, not being an inhabitant of this state, shall die in such county, leaving assets therein.

3. Where the testator, not being an inhabitant of this state, shall die out of the state, leaving assets in the county of such court.

4. Where a testator, not being an inhabitant of this state, shall die out of the state, not leaving assets in such county, but assets of such testator shall come into the county thereafter.

Witnesses may be summoned.

SECT. 36. Witnesses may be summoned by subpœna, to be issued by the clerk of the probate court, to appear and testify respecting the execution, subscribing, and attestation of such will.

Person having custody of will compelled to produce it..

SECT. 37. On the application to the probate court of any person interested, such court shall cause the clerk thereof to issue a citation under his seal of office to any person alleged to have the custody or possession of any will, requiriug such person to produce the same before such court, at such time as the court shall deem reasonable, to the intent that the same may be duly proved; and any person having such will in his possession, who, without any just cause, shall neglect or refuse to produce such will, in obedience to such citation, may be committed to the jail of the county, by an order of the court, there to remain until he produce such will, or shall be discharged by the further order of the court; and shall, moreover, in an action on the case, be liable to any person interested in such will, for the damages produced by withholding the same.

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ARTICLE 2.

SECT. 38. Such person, alleged to have the custody of any will, shall not be committed to jail, as aforesaid, if he will make and file his affidavit that such will was never in his possession, or that he parted with the custody of such will, prior to the service of such citation, to some person entitled to the custody thereof, in good faith and without any view or intention to defeat or delay probate thereof. May discharge himself on affidavit.

SECT. 39. Written wills, offered for probate, shall be proved by one or more of the subscribing witnesses; or if they be dead, insane, or out of the state, or have become incompetent since attesting such will, then by the proof of the hand writing of the testator, or of at least two of the subscribing witnesses thereto; and the probate court, or clerk thereof, taking such proof shall enquire particularly into the facts and circumstances of the execution, subscribing, and attesting of such will, and shall be satisfied of the genuineness and validity thereof before admitting the same to probate, or granting letters testamentary or of administration with the will annexed, thereon. Number of witnesses to prove a will.

SECT. 40. If none of the subscribing witnesses to such will be produced, their insanity, death, subsequent incompetency, or absence from the state shall be satisfactorily shown before proof of the hand writing of the testator or of any of the subscribing witnesses shall be received. How proved if witnesses dead, &c.

SECT. 41. Whenever proof of any will is made by proving the hand writing of the testator, or of any subscribing witness thereto, such proof thereof shall be taken and received as would be proper to prove the same on a trial at law. How hand writing proved.

SECT. 42. If any person shall be a subscribing witness to the execution of any will wherein any beneficial devise, legacy, interest, or appointment of any real or personal estate shall be made by such will to such witness, and such will cannot be proved without the testimony of said witness, or proof of his signature thereto as a witness, the said devise, legacy, interest, or appointment shall be void so far only as concerns such witness, or any person claiming under him; and such person shall be a competent witness and compellable to testify, if his testimony be necessary, respecting the execution of said will, in like manner as if no such devise or bequest had been made; but if such witness would have been entitled to any share of the testator's estate in case such will were not established, then so much of the share of such estate as would have descended or been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will, and he shall stand as a devisee or legatee to all intents and purposes, as if the same had been particularly devised or bequeathed to him for such share as may thus properly belong to him; and he shall still be a competent witness, and compellable to testify as a subscribing witness. Devise, &c., to a witness, how far void.

SECT. 43. If it shall appear upon the proof taken, that the will was duly executed; that the testator at the time of executing the same was of full age to devise his property; and of Proof, &c., shall be written down and recorded by the clerk.

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sound mind and memory, and not under coercion and restraint, the said proofs and examinations shall be written down by said clerk, and subcribed by the witness examined, and attested under the hand of said clerk and his seal of office; and the will, and said proofs and examination, with such attestation, shall be recorded by such clerk in a book provided and kept for that purpose, and certified to be a full and true record.

Certificate endorsed on the will.

SECT. 44. Every will so proved shall have a certificate endorsed thereon, setting forth, in substance, that such will has been duly admitted to probate before said court or clerk, as the case may be, and that a full and complete record of such will, and the proofs and examinations of the witness or witnesses by whom the same was proved, have been duly recorded; specifying also, in such certificate, the name or names of the witness or witnesses by whom such proof was made, and the title and page of the book in which the same is recorded; which certificate shall be attested by the clerk of such court under his hand and seal of office.

Effect of a will so proved, and the record thereof as evidence.

SECT. 45. Every will so proved and certified may be read in evidence in any court of this state, without farther proof thereof; and the record of such will, proof, examination, and attestation made as aforesaid, or a full and complete copy thereof, certified by the clerk in whose custody the same may be, under his hand and seal of office, shall be received in evidence, and shall be as effectual in all cases as the original will would be, if produced and proved; and may, in like manner be repelled by contrary proof.

Court may admit to probate after refusal of the clerk.

SECT. 46. If the clerk of the probate court shall refuse to admit any will to probate, such refusal shall not prevent application for probate thereof to the proper court; and such court shall hear and determine such application as in cases in which application for probate is made to such court in the first instance.

Will proved out of the state.

SECT. 47. Any will that shall have been proved or allowed in any other of the United State, or in any foreign country, according to the laws of such state or country, may be received and recorded in this state in the manner and for the purposes mentioned in the two next following sections.

How such will shall be certified.

SECT. 48. Such will shall be duly certified under the seal of the court or officer taking such proof; or a copy of such will and the probate thereof shall be duly certified by the clerk, prothonotary, or surrogate, under the seal of his court or office who has the custody of such will, or the record of the will, and the probate thereof; and said certificate shall be attested and certified to be authentic, and by the proper officer, by the presiding, superior, first, or sole judge of the court, by whose clerk or prothonotary such certificate shall have been made; or if such will was admitted to probate before any surrogate or other officer, being his own clerk, his certificate of such will or record shall be attested and certified to be authentic, and by the proper officer, by the presiding, chief, or sole judge, or chancellor, or vice chancellor, of the court, having supervision of the acts or

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the correction of errors in the proceedings of such surrogate or other officer.

Where such will may be filed, and effect thereof.

SECT. 49. Such will, certified as aforesaid, or said copy of such will, and the probate thereof, may be produced by the executor or any person interested therein, to the probate court of the county in which there is any estate, real or personal, on which the will may operate; and if said court shall be satisfied that the instrument ought to be allowed as the last will and testament of the deceased, such court shall order the same to be filed and recorded by the clerk; and thereupon such will shall have the same force and effect as if it had been originally admitted to probate, and recorded within this state.

Letters may issue thereon.

SECT. 50. After allowing and recording any will pursuant to the provisions of the last preceding section, letters testamentary or of administration, with the will annexed, may be issued, and the settlement of the estate found in this state may be proceeded in, in all respects, as is provided by law in cases in which the will has been executed and proved, and letters testamentary or of administration with the will annexed, issued thereon within this state.

How far such foreign will shall be valid, &c.

SECT. 51. Nothing contained herein shall be construed to make valid any will executed and proved in another state, or in a foreign country, that is not executed, attested, and subscribed in the manner prescribed by the laws of this state, nor to give any operation and effect to the will of any person, different from what it would have had if originally executed, proved, and allowed in this state.

ARTICLE III.

Of contesting the validity and probate of wills and testaments.

SECTION

52. Objections to proof of will before the clerk.
53. How verified.
54. Party failing to prosecute, &c., probate may be allowed.
55. Objections in the probate court.
56. Who may file objections—defendants.
57. Citation to be served fourteen days, &c. Guardian ad litem.
58. Notice to non-resident defendants.
59. How far court in such cases governed by rules of practice, &c.
60. Issue, and trial by jury—defendant to have affirmative.
61. How far decision conclusive.
62. Proceedings after decision.
63. Either may appeal to the circuit court—bond.

SECTION

64. Amendments, and trial in the circuit court.
65. Writ of error in the supreme or circuit court.
66. Decision of the supreme and circuit court to be certified to the probate court.
67. Who shall be liable for costs, &c.
68. How enforced.
69. Wills, &c. may be controverted within two years after probate, &c.
70. Exception in favor of infants, &c.
71. Bond in such case required.
72. Allowance of probate, prima facie evidence, &c.
73. Proceedings how conducted—appeals, &c.
74. Final decision of the court.

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SECTION
75. Former proofs and examinations evidence, &c.
76. Revocation shall be recorded, and notice given to the executors—costs.
77. Proceedings shall be by bill in chancery.
78. Lost or destroyed will.
79. How proved.
80. How far and in what cases record of the proofs, &c. to be evidence.
81. The term "will" defined.
82. Certain provisions of this article to apply to previous as well as subsequent wills.
83. Certain wills not affected by the foregoing provisions.

Objection to proof of will before the clerk.

SECT. 52. Whenever any will shall be offered to be proved before any clerk of the probate court, and objections shall be made in writing by any person interested in or affected by the provisions of such will, such clerk shall not allow proof thereof, but shall file the same, and the objections thereto, in his office.

How verified.

SECT. 53. Such objections shall be verified by the affidavit of the person making the same, alleging that he does not make the same for vexation or delay.

Party failing to prosecute, probate to be allowed, &c.

SECT. 54. If the person contesting such will fail to prosecute his objections thereto, or to resist the probate thereof, by the next succeeding term of the probate court, such court may admit such will to probate before the close of such term, as if such objections had not been made.

Objections in the probate court.

SECT. 55. Whenever any will is offered for probate before the probate court, and objections shall be made thereto, in like manner as provided in the section next before the last preceding section, such court shall allow to the party making the same, a reasonable time, if desired, to file his allegations against the validity or proof of such will.

Who may file objections.

SECT. 56. Any person interested in any will, or any person who, if the testator had died intestate, would be an heir, or distributee of his estate, may contest the validity of such will, or resist the probate thereof, by filing in the court where such will is offered for probate, his allegations in writing, setting forth the idiotcy or unsoundness of mind of the testator, or that the will was not duly executed, or that the same was executed under duress or restraint, or obtained by fraud, or that any other valid objection exists to the validity of such will, or the allowance of probate thereof: and such persons shall make defendants thereto the executors named therein, and all other persons named as devisees, legatees, trustees, guardians, or otherwise beneficially interested therein.

Who defendants.

Citation to be served fourteen days, &c.

SECT. 57. Upon proof of service of citation upon the person or persons named therein, at least fourteen days before the hearing of such cause, or upon proof of notice of publication, as required in the next section, the said court may proceed to hear and determine such cause; and if any of the persons named as parties in such proceedings, or as legatees or devisees in the will of the testator, are minors, the court shall appoint guardians to take care of their interests in the controversy.

Guardians ad litem.

Notice to non-resident defendants.

SECT. 58. If it shall be made to appear, by the affidavit of a disinterested witness, that any person entitled to notice as aforesaid, shall not reside within this state, the probate court, at

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a term thereof, or the clerk in vacation, may make an order that notice of the pendency of such proceedings shall be published for three weeks successively, in some public newspaper printed in the county, or if no paper is published therein, then in the county nearest thereto in which a newspaper is published, and upon proof that such publication has been made, at least forty days before the hearing of such cause, the same may be proceeded in and determined in like manner as if such person had been duly served with citation.

Courts to be governed by the rules of practice, &c.

SECT. 59. In all matters relating to the mode of procedure, investigation, hearing, and determination of such cause, which are not specially provided for in this article, such court shall proceed and be governed by the rules, regulations, and usages of courts in other causes, so far as the same are applicable and proper.

Issue.

SECT. 60. An issue may be made up in such proceedings, whether the writing produced be the last will and testament of the testator or not, which may be tried by a jury; and upon this issue, the defendants in such proceedings shall have the affirmative.

Affirmative.

How far decision conclusive.

SECT. 61. The final determination of any such issue, and any final determination by any judgment or decree of the court, in the premises, on any of the matters of law or of fact, controverted in such proceeding, contesting the validity, or resisting the probate of such will, shall only be conclusive as respects the facts or matters therein controverted, so far as shall relate to the personal estate disposed of by such will, and then only upon such persons as may have been made parties to the proceedings, and had due notice thereof.

Proceedings after decision.

SECT. 62. If such determination be against the validity of such will, or the competency of the proof, the court shall refuse probate thereof; but if the determination be in favor of the validity or due execution of such will, as the case may be, probate thereof shall be recorded and certified, as in other cases.

Either party may appeal to the circuit court.

SECT. 63. Any party aggrieved by the final decision or decree of such court, in the premises, may appeal therefrom to the circuit court of the county for which such probate court was held, by filing with the clerk of such probate court a bond, with sufficient sureties, to be approved by such clerk, in a penal sum of double the amount of costs in such probate court, and the probable amount of costs which may accrue in the circuit court, and conditioned for the diligent and due prosecution of such appeal, and the payment of all costs which may be taxed against him, in the event that he shall become liable for such costs, by the decision of such circuit court.

Bond required.

Amendments and trial in the circuit court.

SECT. 64. Such circuit court may permit the parties in such appeal to amend the proceedings, by bringing additional parties before such court, or by amending the allegations or pleadings, or whatever else in the proceedings may be necessary and proper, that right and justice may be done; and on the same terms and conditions on which the same might be done, had such ac-

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tion and proceedings been originally instituted in such circuit court: and such cause shall be conducted, heard, and determined, and all questions of law and fact, shall be tried, in all respects, as if the same had been an original proceeding commenced in such circuit court.

Writ of error in the supreme or circuit court.

SECT. 65. Any person, executor, devisee, legatee, or person affected by the proceedings of such probate court, instead of appealing from the decision or decree of such court, may prosecute his writ of error in the supreme court, or proper circuit court, and may assign errors upon matters of fact as well as upon matters of law, to be determined by the court.

Decision of supreme or circuit court to be certified to probate court.

SECT. 66. The determination, judgment, or decree of the supreme or circuit court, upon such writ of error, or of the circuit court upon such appeal, unless removed to the supreme court by writ of error or appeal, shall be certified back to such probate court, with directions as to what farther order such court shall take in the premises.

Who shall be liable for costs.

SECT. 67. The costs and expenses shall be paid by the party contesting the validity of such will, or the probate thereof, if probate shall be allowed; and if probate be refused, the party who shall have resisted such refusal may be personally required by the court to pay the costs and expenses of the proceedings, or the same may be directed to be paid out of the property of the deceased.

How enforced.

SECT. 68. The payment of the costs and expenses in all such cases may be enforced by process of attachment or execution, as payment thereof is enforced in other actions and proceedings of the same courts.

Will, &c. may be controverted within two years after probate.

SECT. 69. At any time within two years after any will shall have been proved, either before the probate court, or before the clerk thereof, the due execution of such will, or the competency, soundness of mind, idiocy, or other valid objection to the allowance of such will, as the last will and testament of such testator, not having been controverted, any person affected by such will, or any devisee or legatee named therein, or in any other will of such testator, whether the same be revoked or not, and any person capable of taking, as heir of such testator, had he died intestate, or who is otherwise interested in such estate, may, upon application to the probate court in which such will may be recorded, have such proceedings thereon had as may be necessary to try any question of law or of fact, affecting or impeaching the validity or due execution of such will.

Exception in favor of infants, &c.

SECT. 70. But infants, married women, persons absent from the state, or insane, shall have two years, after their respective disabilities are removed, to appear and contest the validity or due execution of such will; and any person not a party to the proceeding, or who had not due notice thereof, by which the probate of such will was controverted, may institute proceedings, as provided in the last preceding section.

Bond in such case required.

SECT. 71. Before any proceedings shall be had on any such application, the person making the same, or some other person

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in his behalf, shall file and execute a bond, with sufficient sureties, and in such amount, as shall be approved by the clerk of such court, conditioned for the diligent prosecution of such proceedings, and for the payment of all costs which may be taxed against him, in the event of his failure to impeach the validity or due execution of such will.

Allowance of probate prima facie evidence, &c.

SECT. 72. The allowance of probate shall be prima facie evidence on the trial of the issue directed in the sixty-ninth section of this chapter, of the due attestation, execution, and validity of such will.

Proceedings how conducted.

SECT. 73. Such proceedings shall be conducted in all respects as proceedings controverting the validity, or due execution, or resisting the probate of a will, as above prescribed in this article; and any determination thereof shall be of like force and effect, and the same may be appealed from, or a writ of error prosecuted in like manner; and all subsequent proceedings thereon shall be governed by the same provisions and restrictions of law.

Appeal, &c.

Final decision.

SECT. 74. If the final determination of such proceedings shall be in favor of the validity or due execution of the will, or the competency of the proof thereof, the court shall ratify and confirm the probate before made of such will; but if the decision shall be against the validity of the will, or its due execution or the competency of the proof thereof, such court shall revoke and annul the record and probate thereof; and costs shall be awarded and collected in like manner as is prescribed in the preceding sections of this article.

Former proofs evidence.

SECT. 75. Upon any such hearing or trial, the proofs and examinations of any witnesses which may have been taken on the first proof of the will, may be received in evidence, if such witnesses are dead, insane, or out of the state.

Revocation shall be recorded, and notice given to the executors.

SECT. 76. Whenever the probate of any will shall be revoked as herein provided, the clerk of the probate court shall record such revocation in his record of wills and probate thereof, and attest the same; and shall cause a notice thereof to be served by the sheriff on the executors or administrators with the will annexed, if letters shall have issued; and cause notice thereof to be published for three weeks successively in in a newspaper printed in his county, if one shall be printed therein; and the expenses for the record, notice, service thereof and publication, shall be taxed as a part of the costs of the proceedings against the party liable for the costs, under the determination or decree of the court in which the same shall have been finally determined.

Costs.

Proceedings may be by bill in chancery.

SECT. 77. A will may be established or contested by bill in chancery; and in such case, and also in case of a bill to establish a lost or destroyed will, the same may be prosecuted in the circuit or probate court of the proper county.

Lost or destroyed will.

SECT. 78. Whenever any will shall have been lost or destroyed by accident or design, and the same shall have been established by the proper proceedings in a court of chancery,

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the decree of such court establishing such will shall be recorded by the clerk of the proper probate court in which such will might have been proved if not lost or destroyed; and letters testamentary or of administration with the will annexed, shall be issued thereon in the same manner as upon wills duly proved before such court or the clerk thereof.

How proved.

SECT. 79. No will of any testator shall be allowed to be proved and established as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator; or be shown to have been destroyed in the lifetime of the testator without his knowledge or express consent, or otherwise fraudulently disposed of; nor unless the provisions shall be clearly and distinctly proved by at least two credible witnesses, or by a correct copy or draft and the testimony of one witness.

How far and in what cases record to be evidence.

SECT. 80. The record of the proofs and examinations taken and recorded pursuant to the provisions of the last preceding article in proving any will, and exemplifications of such record by the officer in whose custody the same may be, shall be received as evidence upon any trial or controversy concerning any lands devised by such will, and shall be of the same force and effect upon the trial of such controversy, and may be rebutted, impeached, and sustained, in like manner as if taken in open court, if the witnesses examined when probate was allowed, are dead, insane, out of the state, or have become incompetent since the admission of such will to probate.

The term 'will' defined.

SECT. 81. The term "will" as used in this chapter, shall be construed to include all wills, testaments, codicils, and supplemental wills whatsoever.

Certain provisions of this article shall apply to previous as well as subsequent wills.

SECT. 82. The provisions of this article in relation to the proof and probate of wills, and the jurisdiction of the probate court, and the duties and powers of the clerk of such court, and the proceedings in respect to establishing, trying, or contesting the validity of any will, shall apply as well to wills made previous, as to those made subsequent, to the time when this article shall take effect.

Certain wills not affected.

SECT. 83. Nothing contained in the provisions of this and the preceding article shall be construed to impair the validity of any will made, before these articles shall take effect, in conformity with any law in force at the time of the execution of such will; or affect the construction of any will where the testator shall have died before the expiration of three months after the provisions of said articles shall be in force.

ARTICLE IV.

Of letters testamentary and of administration.

SECTION
84. Letters testamentary.
85 Persons competent as executors.
SECTION
86. Married woman may act with her husband's consent.

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SECTION
87. Executor may renounce.
88. To whom letters granted in case any executor refuse.
89. Letters with the will annexed.
90. Executor not named in letters shall have no authority.
91. Powers of an executor before issuing letters.
92. Letters of administration; effect of letters first issued.
93. To whom letters of administration shall be granted.
94. Rules respecting grant of administration.
95. Right to administer may be relinquished.
96. Husband entitled to administer on the estate of his wife.
97. Administrator of a married woman shall account to her husband.
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100. Powers of special administrator.
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102. Duties of special administrator.
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104. Each executor, administrator, &c. shall give bond.
105. Shall take an oath.
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111. Form of letters testamentary.
112. Form of letters of administration.
113. Letters evidence of authority, &c.
114. Shall be recorded; copies, &c. evidence.

ARTICLE 4.

Letters testamentary.

SECT. 84. Whenever any will shall have been duly admitted to probate, before the proper clerk or probate court, the clerk of such court shall issue letters testamentary thereon to the person or persons named therein as executors, who are competent by law to serve as such, and who shall appear and qualify; but no letters testamentary shall issue until the expiration of ten days after the existence of the will shall be known.

Persons competent as executors.

SECT. 85. No person shall be deemed competent to serve as an executor, who, at the time the will is proved, shall, upon proof before such clerk or court, be shown to be,

1. Incapable in law of making a contract, except married women;
2. Under the age of twenty-one years;
3. Who shall have been convicted of an infamous crime;
4. Who shall be adjudged incompetent by said clerk or court, by reason of improvidence or want of understanding.

Letters with the will annexed.

And if any such person be named as the sole executor in any will, or if all the persons named therein as executors, be incompetent, letters of administration with the will annexed shall be issued as hereinafter provided in the case of all the executors renouncing.

Married woman.

SECT. 86. No married woman shall be entitled to letters testamentary unless her husband consent thereto, by a writing to be filed with the clerk of the probate court; and by giving such consent he shall be deemed responsible for her acts jointly with her.

Executor may renounce.

SECT. 87. Any person named as executor in a will may renounce such appointment by appearing before the clerk of the

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probate court and subscribing such renunciation in the presence of the clerk, who shall file the same in his office; or by appearing before the probate court and signifying his renunciation, which shall be entered by the clerk in the minutes of the proceedings of said court; or such person may renounce his appointment by an instrument in writing under his hand, attested by two witnesses; and upon the same being proved to the satisfaction of the clerk, it shall be filed by him in his office.*

To whom letters granted in case any executor refuse.

SECT. 88. If any person who is appointed an executor shall refuse to accept the trust, or if after being cited for that purpose, he shall neglect to appear and accept the same, or if he shall fail to appear for twenty days after probate of the will, to give bond as required by law, and there is any other executor or executors named in such will capable and willing to accept such trust, letters testamentary shall issue to such other executor or executors.

Letters with the will annexed.

SECT. 89. If there be no person named in the will as executor, or if all the persons named therein shall renounce, or after summons issued and served, or notice given as aforesaid, shall fail to appear and qualify, or give bond as such executors, then letters of administration with the will annexed, shall be granted by the clerk of the probate court, or by the probate court, to whichsoever application therefor shall be made, to any residuary legatee named in such will, if there be any one who is competent; or if there be none, or none who will accept, then to any principal or specific legatee, if there be any who are competent; and if there be none, or none that will accept, then to any person in like manner and under like restrictions and regulations, as letters of administration are granted in cases of intestacy.

Executor not named in the letters has no authority.

SECT. 90. Every person named in the will as executor, who shall appear and qualify and give bond, shall be named in the letters testamentary; and every person named in such will as executor, and not named as such in the letters testamentary, shall be deemed to be superseded thereby, and shall have no power or authority whatever as an executor.†

Powers of an executor before letters issued.

SECT. 91. No executor named in a will, shall, before letters testamentary are granted, have any power to dispose of any part of the estate of the testator, nor to settle any of the debts due therefrom, nor to interfere with such estate in any manner further than is necessary for the preservation of the same; and for this purpose he shall have power to institute and prosecute any suit, action, or proceedings requisite to prevent the loss, destruction, or conversion of such property; and after granting letters testamentary, such action shall be continued as if the same had been instituted after the issuing of such letters, whe-

* A person appointed an executor cannot have a right to the property of the testator, nor be liable to a suit for his debts, unless he accept of the executorship. *Calloway*, et al., v. *Doe*, d. *Joyes*, 1 Blackf. 272.

† In an action by two as executors, the defendant, after over of the probate, pleaded in abatement that one of the plaintiffs was not executor; the other only having proved the will and taken out letters testamentary. *Held*, that under the statute requiring security of executors, the plea was good. *Call*, et al., v. *Ewing*, 1 Blackf. 301.

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ther the person or persons named as plaintiffs in such action, are all named in the letters or not.* ARTICLE 4.

Letters of administration.

SECT. 92. Upon the decease of any person dying intestate, letters of administration on his estate shall be granted as follows:

1. Where an intestate, at the time of his death, was an inhabitant of any county in this state, letters of administration shall be granted in such county, in whatever place such death may have happened.

2. When an intestate, being a transient person, or not an inhabitant of this state, shall die in any county in this state, leaving assets therein, such letters shall be granted in such county.

3. Where an intestate, not being an inhabitant of this state, shall die out of this state, leaving assets in any county in this state, such letters shall be granted in such county.

4. Where an intestate, not being an inhabitant of this state, shall die out of the state, not leaving assets in any county in this state, but assets of such intestate shall afterwards come into any county in this state, such letters shall be granted in such county.

5. Whenever any intestate, not being an inhabitant of this state, shall die out of the state, leaving assets in several counties in this state, or assets of such intestate shall, after his death, come into several counties of this state, letters of administration may be granted in any one of the counties in which such assets may be, at the time of his death, or into which the same may have thereafter come; and the administration which shall, in any such case, be first lawfully granted, shall extend to all the estate of the intestate in this state, and shall exclude the jurisdiction of the probate court of every other county.

To whom letters of administration shall be granted.

SECT. 93. Administration of the estate of an intestate shall be granted to some one or more of the persons named in this section, who are competent, as hereinafter provided; and they shall be respectively entitled thereto in the following order:†

Widow.

1. To the widow.

Next of kin.

2. To the next of kin entitled to share in the distribution of the estate.

Largest creditor.

3. To the largest creditor of the intestate residing in this state.

Some competent person.

4. To such competent person as the clerk or court shall see fit to appoint.

Rules respecting grant of administration.

SECT. 94. The following rules, as applicable to the last preceding section, shall be observed:

1. If no person entitled to take administration of the estate, according to the first three clauses of said section, shall apply for letters of administration within thirty days after the death

* Executors must prove the will and take out letters testamentary before the filing of their declaration. *Call*, et al., v. *Ewing*, 1 Blackf. 301.

† The granting of letters of administration is a *judicial* act, and where the court granting them has jurisdiction, individuals and courts of justice are bound to respect the authority of the letters, and to presume omnia rite acta. *Ray*, et ux., v. *Doughty*, et al., 4 Blackf. 115.

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of said intestate is known, all persons thus entitled shall be considered as having relinquished their right to such administration.

2. If several persons of the same degree of kindred to the intestate are entitled to administration, they shall be preferred in the following order: 1st. Males to females. 2d. Relatives of the whole blood to those of the half blood. 3d. Unmarried women to such as are married.

3. Where there are several persons equally entitled to administration, the clerk or court may, as shall seem proper, grant letters of administration to one or more such persons; and where there is any person entitled to administration, willing to undertake the same, the court may associate with such person any other competent individual or individuals, the person entitled to such administration assenting thereto.

4. If application be made by any creditor to administer on the estate of the intestate, he shall prove the amount of his debt, by his own affidavit, or the affidavit of some person filed with the clerk; and if two or more creditors are equally entitled, the court shall decide who shall administer.

5. No letters of administration shall be granted,

To any person convicted of an infamous crime; nor

To any person incapable in law of making a contract; nor

To any person who shall be adjudged by the clerk or court to be unfit to execute the duties of such trust, by reason of improvidence, want of discretion, or understanding; nor

To any married woman;

But when a married woman would otherwise be entitled to administration, the same may be granted to her husband in her right and behalf.

6. In all cases where any person, not an inhabitant of this state, shall die, leaving assets in this state, or assets shall come into this state after his death, and if before the granting of letters here, it shall appear that letters testamentary or of administration shall have been granted on such estate, by competent authority, in any other state of the United States, then the person so appointed, on producing such letters, shall be entitled to letters of administration in preference to all other persons, except creditors and heirs of the intestate entitled to distribution, who are inhabitants of this state.

Right to administer may be relinquished.

SECT. 95. Any person entitled to administration may relinquish the right thereto in like manner as provided above for the renunciation of an executor.

Husband entitled to administration on the estate of his wife.

SECT. 96. A husband, as such, if otherwise competent according to law, shall be solely entitled to administration on the estate of his wife; but shall be liable, as administrator, for the debts of his wife, contracted before marriage, only to the extent of the assets received by him as administrator: if he shall not take out letters of administration on her estate in his hands, he shall be presumed to have assets in his hands sufficient to satisfy her debts, and shall be liable therefor; and if he shall die, leaving any assets of his wife unadministered, they shall pass to his

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executors or administrators as part of his personal estate, but shall be liable for her debts to her creditors, in preference to the creditors of the husband. ARTICLE 4.

SECT. 97. If letters of administration shall be granted on the estate of a married woman to any other person than her husband, by reason of his neglect, refusal, or incompetency to take the same, such administrator shall account for and pay over the assets and moneys remaining in his hands after the payment of debts and expenses of administration to such husband or his personal representatives. Administrator of a married woman shall account, &c. to her husband.

SECT. 98. No letters of administration shall be granted until the expiration of fifteen days from the death of the intestate; and the clerk or court to whom application for letters is made, may examine the person or persons applying therefor, on oath, touching the time and place of the death of the intestate, and whether or not he left any will; and such clerk or court may examine any other person respecting the same matters, and may compel the attendance of witnesses for that purpose. Letters of administration not to issue until after fifteen days.

SECT. 99. In case of a contest relative to any will, or relative to the right to letters testamentary or of administration, or from any other cause, a delay is necessarily produced in granting such letters, the clerk or court authorized to grant the same, may, if it be deemed necessary, issue special letters of administration to one or more persons, authorizing the collection and preservation by them of the goods of the deceased, until letters testamentary or of administration shall be duly issued. Special letters may be granted in certain cases.

SECT. 100. Every such special administrator shall have authority to collect the goods, chattels, personal estate, and debts of the deceased, and to secure and preserve the same at such expense as shall be deemed reasonable by the proper probate court; and for the purposes aforesaid may maintain suits as an administrator, and under the direction of said probate court he may sell such of said goods as may be perishable, after the same shall have been appraised, and notice given, as in other cases of sales of the personal property of an intestate, by an administrator. Powers of special administrator.

SECT. 101. Wherever any person shall die, and if before the expiration of the period limited for issuing letters of administration, or if in case of a will, there shall be no executor to act before issuing letters, it shall be made to appear to the clerk of the probate court, or to such court, by the affidavit of some person of competent age, that any person is unlawfully intermeddling with such estate, whereby the same will be lessened in value, wrongfully removed from the county in which administration should of right be granted, or secreted, or otherwise disposed of, to the injury of said estate, and that there is no person having authority to take care of or preserve said property, such clerk may issue special letters, authorizing some person, as special administrator, to look after, collect, and preserve the property of such intestate, until demanded by the person duly authorized by law to administer the same. Cases enumerated in which the clerk may grant special letters.

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Duties of special administrator.

SECT. 102. Such special administrator shall do and perform all the duties of his said appointment, and, if necessary to secure such property or any part thereof, may commence and maintain any suit or action necessary to obtain possession thereof, or to secure the same, or the value thereof.

When his authority shall cease.

SECT. 103. Upon letters testamentary or of administration being granted, the power and authority of every such special administrator shall cease; and he shall, on demand, deliver to the rightful executor or administrator all the property, effects, and assets of the deceased which may be in his hands, and render an account, on oath, to the probate court, of all his proceedings.

Each executor, administrator, &c. shall give bond.

SECT. 104. Every person appointed executor, administrator, administrator with the will annexed, or special administrator, shall, before receiving letters, execute a separate bond, payable to the state of Indiana, with one or more sufficient sureties, inhabitants of this state, to be approved by the clerk or court receiving the same, he and his sureties to be jointly and severally bound: the penalty in such bond shall not be less than twice the value of the personal estate to be administered; which value shall be ascertained by said clerk or court, by the examination, on oath, of the person applying for letters, or of such other person as such clerk or court shall think proper to examine; and said bond shall be conditioned that such executor or administrator shall diligently and faithfully execute the duties and trusts committed to him as such, and that he will obey all orders and decrees of such probate court, made pursuant to law, touching the administration of the estate entrusted to him.

Shall take an oath.

SECT. 105. Such executor, administrator, administrator with the will annexed, or special administrator, before letters shall be issued to him, shall also take and subscribe an oath or affirmation, before the clerk of the proper probate court, that he will honestly and faithfully discharge the duties and trusts of his said appointment, according to law; which oath or affirmation, subscribed as aforesaid, and attested by the clerk, shall be filed and recorded as a part of the proceedings in respect to such estate.

Clerk in vacation may grant letters.

SECT. 106. The clerk of the probate court shall, in the vacation of such court, have power to grant and issue letters testamentary, of administration with the will annexed, and of administration as in this article prescribed, in all cases in which the validity, due execution, or the competency of the proof of the will, or the right to administration, as the case may be, is not controverted; and also when there is no executor or administrator to act, to grant letters appointing special administrators, as in this article provided; but he shall have no power to grant letters at any time during the term for which such court may be in session.

Clerk may take bond, &c.

SECT. 107. Said clerk shall also have power to take and approve the bond of any such executor or administrator, when letters are granted by him, and to administer the oath required by this article of any person assuming the trusts aforesaid.

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Shall report to the court letters granted by him.

Court may supersede or confirm such letters.

SECT. 108. It shall be the duty of said clerk to report to the probate court, at its next term thereafter, all his acts in the premises, and the said court, for any good cause shown, may supersede the letters issued by such clerk, or disapprove of the bond taken; and if such court shall supersede letters issued by said clerk, or disapprove of any bond, such court shall thereupon grant letters to such person or persons as may be entitled to the same, or require a new bond, or other or additional sureties as the case may require; but if no valid objection appears to the grant of letters by such clerk, or to the bond taken by him, the same shall be ratified and adopted as the act of the court, and such ratification and adoption recorded in the order book of said court.

Bonds to be filed in the clerk's office.

SECT. 109. All bonds required by the provisions of this article shall be filed, recorded, and kept in the office of the clerk of the probate court, where the same was taken and approved.

Letters tested in the name of the clerk, &c.

SECT. 110. All letters testamentary and of administration, or of any special administrator, shall be tested in the name of the clerk issuing the same, signed with his name, and sealed with the seal of the probate court of his county.

Form of letters testamentary.

SECT. 111. Letters testamentary shall be annexed to a copy of the will and certificate of the probate thereof, and shall be substantially in the following form:

"I, —— ——, clerk of the probate court in and for the county of ——, in the state of Indiana, do certify the annexed to be a true copy of the last will and testament of —— ——, late of the [here insert the county and state], deceased, and of the certificate of probate as endorsed thereon; and —— —— having duly qualified and given bond as required by law, as [executor] or [administrator with the will annexed], (as the case may be,) is duly authorized to take upon himself the administration of said estate according to such will.

"Witness my hand and the seal of said court, this
[L. S.] —— day of ——, in the year of our Lord one thousand eight hundred and ——."

Form of letters of administration.

SECT. 112. Letters of administration shall be substantially in the following form:

"I, —— ——, clerk of the probate court in and for the county of ——, in the state of Indiana, do hereby certify that administration of the goods, chattels, rights, credits, moneys, and effects, which were of —— ——, late of —— county, deceased, who died intestate, is granted to —— ——; and the said —— —— having qualified and given bond as such administrator, is duly authorized to take upon himself the administration of such estate according to law.

"Witness my hand and the seal of said court, this
[L. S.] —— day of ——, in the year of our Lord one thousand eight hundred and ——."

Letters evidence of authority, &c.

SECT. 113. Letters testamentary and of administration, and letters appointing a special administrator, granted by any officer or court having jurisdiction, shall be conclusive evidence of the

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authority of the persons to whom the same may be granted from the date thereof until the same shall be reversed, revoked, or superseded; and when granted and issued according to law, shall exclude the probate court of every other county from any jurisdiction as respects the probate of the will on which such letters testamentary or of administration with the will annexed, are granted, or the granting of letters in the case of intestacy; and shall also extend to all the property and estate of the deceased in this state.

Shall be recorded. Copy shall be evidence.

SECT. 114. The clerk of each probate court shall record, in books to be provided for that purpose, all letters testamentary and of administration, and letters appointing as special administrator; and the records of such letters, and the transcripts thereof, duly certified by the clerk of said court, under his seal of office, shall be evidence in all courts in the same manner as if the originals were produced.

ARTICLE V.

Of the removal of executors and administrators: of administration with the will annexed: and proceedings in case a will is discovered after the issuing of letters of administration.

SECTION

115. Executor or administrator may be removed—causes for removal specified.
116. Additional sureties may be required in certain cases.
117. Application for removal or for other sureties, how made.
118. What shall be specified, &c.
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120. Notice to non-residents.
121. Hearing of the application.
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127. Removal of executor or administrator may be by rule of court.
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130. On removal, &c., authority shall cease.
131. Administrator with the will annexed, &c.
132. Shall give bond, &c.
133. When remaining executor or administrator shall complete the administration.
134. Rights and powers of survivor, &c.
135. By whom powers and duties under the will may be exercised.
136. Executor of an executor.
137. Will discovered after grant of letters.
138. Administrator may execute such will in certain cases.
139. Certain acts valid.
140. During contest respecting the will executor, &c., may be restrained.
141. May do certain acts.
142. Notice of revocation, how given.—Liability of executor, &c., for certain acts done before and after notice.

Executor or administrator may be removed, &c.

SECT. 115. After letters testamentary or of administration with the will annexed, or of administration, or special letters of administration shall have been granted to any person, such per-

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son may be removed and his letters superseded whenever the interests of the estate entrusted to his charge shall require it, for any of the following causes:

1. Where, by reason of age, continued sickness, imbecility of mind, or change of residence, actual or intended, or from any other cause, any such executor or administrator shall become incapable of discharging his trust in such manner as the interest and proper management of the estate entrusted to his care may require. For age, imbecility, &c.

2. When any such executor or administrator shall fail or refuse to return inventories or accounts of sales of the estate, or to render an account of his administration, according to law or the order of the court; or shall fail or refuse to make inventories and apply for an order of the court to sell real estate for the payment of debts and claims against the estate, when the same shall be necessary; or shall waste the estate or be guilty of any maladministration thereof. For failing to return inventory—to account—to convert property into assets.

3. When it shall be shown to the court by his sureties, that such executor or administrator has become, or is likely to become insolvent, in consequence of which such sureties have suffered or will suffer loss. Is insolvent, &c.

4. Where any administratrix, at the time letters issued was unmarried and shall afterwards marry. Marriage of administratrix.

SECT. 116. Any such executor or administrator may, in like manner, be required by the probate court having jurisdiction, to give additional and sufficient sureties, and in default thereof he may be removed and his letters superseded, in any of the following cases: Additional sureties may be required.

1. When such letters may have been granted on insufficient sureties, or such sureties have become, or are likely to become insolvent or insufficient. When sureties insufficient.

2. When the penalty of the bond is not sufficient to secure the due performance of the trusts committed to such executor or administrator, and the payment or delivery of the moneys or assets which may be in his hands to be administered. When penalty insufficient.

3. When any executrix, at the time of granting letters, was unmarried and shall afterwards marry. When executrix shall marry.

SECT. 117. Applications for the removal of any such executor or administrator, or for the purpose of requiring other or additional sureties, shall be made in the court from which letters were issued; and may be instituted by any creditor, devisee, legatee, heir, or other person having an interest in the estate; or by any co-executor, co-administrator, or surety of such executor or administrator. Applications to remove, &c., or for other surety &c., how made.

SECT. 118. Such application shall be in writing, and shall be verified by oath; and shall specify the grounds of complaint against such executor or administrator. Specifications.

SECT. 119. A citation to such executor or administrator shall be issued by the clerk of the probate court to the person complained against, requiring him to appear and answer the Citation.

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complaint contained in such application; which citation shall be served on him ten days before hearing such complaint.

Notice to non-resident.

SECT. 120. If such executor is not a resident of the state, notice of the filing of such application shall be given three weeks successively in some newspaper published in the county where such application is filed; or if none is printed therein, then in some newspaper printed in this state nearest thereto.

Hearing of the application.

SECT. 121. At the term of the court next after notice has been given, by citation or publication for the length of time specified above, the court shall proceed to hear the proofs and allegations of the parties; and on such hearing, may examine such executor or administrator on oath, and shall receive such other competent proof as may be adduced by either party.

Decision of the court and costs.

SECT. 122. The court shall make such determination and order as shall be right in the premises; and if such determination is against the application, costs may be taxed against the person prosecuting the same.

Same.

SECT. 123. If the determination of the court is against such executor or administrator, he shall be removed and his letters superseded, or a new or additional bond or sureties be required, as the case may be; and the court shall also tax the costs of such application against such executor or administrator.

Court may allow time to give bond or sureties.

SECT. 124. If a new or additional bond or other or additional sureties shall be required of such executor or administrator by the court, an order shall be made to that effect, allowing such reasonable time for complying therewith as shall be consistent with the rights and safety of the parties.

Letters superseded.

SECT. 125. If the order of the court is not complied with to the satisfaction of the court, such executor or administrator shall be removed from his said appointment and his letters superseded.

Case of an executrix marrying, &c.

SECT. 126. Whenever the ground of complaint is that any executrix, being an unmarried woman, has, since the granting of letters testamentary, married, the court shall not supersede said letters and remove her, if her husband will signify his assent in writing, filed in open court, to her continuing as such executrix; and if she shall give further surety to the satisfaction of the court, for the discharge of her said trusts if such further surety is required by the court.

Executor or administrator may be removed on rule, &c.

SECT. 127. Whenever the proper probate court shall have reason to believe that any just grounds or causes of removal exist, or that new or additional sureties should be required of any executor or administrator, such court may cause a rule to be served upon such executor or administrator, requiring him to appear on a day therein named and show cause why he shall not be removed; or give a new or additional bond or additional sureties as the case may be.

Order of the court in such case.

SECT. 128. If no sufficient cause is shown against such rule, the court shall make such determination or order thereon as may be just and right, as provided in the previous sections.

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ARTICLE 5.

Court may remove without citation.

SECT. 129. In cases of emergency, where the malconduct, abuse, or mismanagement of such executor or administrator is such that delay would injure the sureties, or the interests of the estate, such executor or administrator may be removed, and his letters superseded instantly, without the formality of any citation or rule as above prescribed.

On removal, authority shall cease.

SECT. 130. Whenever the letters of any executor or administrator are revoked or superseded, all his authority shall cease, and all his acts thereafter as such shall be absolutely void.

Administrator with the will annexed, or de bonis non. See cases cited, post sect. 133.

SECT. 131. In case the sole executor, or all the executors or administrators, or administrator with the will annexed, of the same estate, or the sole administrator, or all the administrators of the same estate, shall die, resign, be removed, or their authority be revoked or superseded, the court having jurisdiction of such estate, or the clerk thereof, shall grant letters of administration, or administration with the will annexed, as the case may be, upon the goods, chattels, credits, and assets of the deceased left unadministered, to the person entitled thereto, as hereinbefore provided in relation to original letters of administration, or of administration with the will annexed.

Shall give bond, &c.

SECT. 132. Such administrator, or administrator with the will annexed, shall give bond in the like penalty, and with the like sureties and conditions, as hereinbefore required of executors and administrators, and shall take and subscribe the same oath.

When remaining executor or administrator shall complete the administration.

SECT. 133. When any executor or administrator, or administrator with the will annexed, shall be removed or superseded, or his authority to act shall cease, and there is any other executor, administrator, or administrator with the will annexed, of the same estate, no successor shall be appointed, but such remaining executor, administrator, or administrator with the will annexed, shall proceed and complete the administration of such estate according to law. *

Rights, powers, and duties of the survivor or successor, &c. See cases cited, ante sect. 133.

SECT. 134. When an executor, or administrator with the will annexed, shall be removed or superseded, or his authority to act shall cease, by reason of his resignation, death, or otherwise, and there are other executors, or administrators with the will annexed, to whom letters were issued, and when all such executors, or administrators with the will annexed, shall be removed or superseded, or their authority to act shall have ceased as aforesaid, and a successor is appointed, such remaining executors or administrators, or such successor, as the case may be, shall have the same rights and powers, and shall do and perform

* An administrator cannot be sued for the devastavit of his intestate, by an administrator de bonis non of the first intestate. *Anthony* v. *McCall*, 3 Blackf. 86.

The administrator of an administrator is not administrator of the first intestate, nor has he a right to administer any of the goods of such intestate; but it is his duty to make a settlement with the probate court of the business done by his intestate in the first administration. *Ray* et ux. v. *Doughty* et. al., 4 Blackf. 115.

If one of the co-administrators of an estate die, the administrator of the deceased is the proper person to pay any balance due to the estate from such co-administrator, and the surviving co-administrator is the proper person to receive it. *Ray* et ux. v. *Doughty* et al., 4 Blackf. 115.

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all the duties and trusts of such will, and be subject to the same liabilities, provisions, and restrictions of law, as if they were the executors or administrators with the will annexed to whom letters had issued in the first instance.

By whom powers and duties under the will may be exercised. See post, sect. 443, 444

SECT. 135. When letters testamentary are not issued to all the persons named in the will as executors, or when letters of administration with the will annexed are granted, the will of the deceased shall be observed and performed, and the executors, or the administrators with the will annexed, to whom letters are granted and issued, shall have all the rights and powers, and be subject to the same duties, trusts, and liabilities, as if they alone had been named as executors in such will.

Executor of an executor.

SECT. 136. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will or testament, letters of administration with the will annexed, of the assets of the first testator left unadministered, shall be issued in the manner, and to the person or persons entitled thereto, as in any case in which a sole executor, or all the executors, may have renounced their appointment.

Will discovered after grant of letters.

SECT. 137. If, after granting letters of administration on the ground of intestacy, any will shall be subsequently proved, and the executor or executors therein named shall appear and give bond, the court having jurisdiction shall revoke the said letters of administration, and grant letters testamentary on such will to such executor or executors.

Administrator may execute such will in certain cases.

SECT. 138. If in any such case the sole executor, or all the executors named in such will, shall fail or refuse to appear and give bond as such, or if no executor is named in such will, the will shall be annexed to said letters of administration, and shall be faithfully executed by such administrator or administrators.

Certain acts valid.

SECT. 139. All sales made in good faith, and all lawful acts done, either by administrators before notice of a will duly proved, or by executors or administrators who may be removed or superseded, or whose authority shall cease, shall remain valid, and shall not be impeached on any will afterwards appearing, or by any revocation or superseding of the authority of any such executor or administrator, or by the death or resignation of any of them.

During contest executor, &c. may be restrained.

SECT. 140. If, before or during the pendency of any proceedings to prove any will, or contesting the validity, due execution, competency of the proof, or the probate of any will, or to establish a lost or destroyed will, letters of administration of the estate of the deceased, or letters testamentary, or of administration with the will annexed, of the same or any previous will shall have been granted, such court, before whom such proceedings shall be pending, shall have authority to restrain the executor or administrator appointed by such letters from any act or proceedings which such court may adjudge would be injurious to the heirs of the deceased, or legatees, or devisees, claiming under any will sought to be proved or established.

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May do certain acts.

SECT. 141. After the service of such restraining order, such administrator, executor, or administrator with the will annexed, as the case may be, shall suspend all proceedings in relation to the estate of the testator, until a decision be had of such cause, except the collection and recovery of moneys, and the payment of debts, and the performance and discharge of such duties, in and about the disposal of the property of such estate, which he might do and perform as the administrator of such estate, and which are not inconsistent with the rights of the parties interested in such estate, whether the will in controversy or the probate thereof should be defeated or established.

Notice of revocation, how given; liability of executor for certain acts done before and after notice.

SECT. 142. Whenever the probate of any will shall be revoked, notice thereof shall be served upon the executor or administrator with the will annexed, to whom letters shall have been issued, and his power and authority shall cease, and he shall account to the representatives of the deceased person whose alleged will was contested, for all moneys and effects received; but such executor or administrator shall not be liable for any act done in good faith previous to the service of the citation by which he is notified of the proceedings to contest the validity, due execution, or probate of such will, nor for any act done in the collection of moneys, or the payment of debts, after the service of the citation and previous to the service of the notice of revocation.

ARTICLE VI.

Of making and returning an inventory: of selections made by the widow, and the delivery of property specifically bequeathed before final settlement of the estate.

SECTION

143. Notice by executor or administrator of his appointment—solvency of the estate.
144. Inventory and appraisers.
145. Appraisers to take oath, &c.
146. Appraisement.
147. Property to be omitted in the inventory, &c.
148. Real estate devised, &c. to pay debts shall be appraised.
149. Annual crops shall be assets.
150. Contents of the inventory.
151. Account of moneys, &c.
152. Return of inventory.
153. Return under oath.
154. Appraisement of estate in different places.
155. Further inventories.

SECTION

156. Appraisers in such cases.
157. Who may return an inventory.
158. Specific bequests appraised, but not sold unless needed to pay debts.
159. Specific bequests may be delivered to legatee.
160. Widow may select property to the value of one hundred dollars.
161. May select one-third of personal property, &c.
162. She shall give bond in such case.
163. Two last sections may apply in case of a will.
164. Selections of the widow noted in the inventory.
165. Executor may demand of the widow the amount, &c. secured by such bond.

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PART II.

Notice by executor or administrator of his appointment.

SECT. 143. Every executor or administrator shall, within thirty days after his appointment to such trust, give notice thereof by publication for three weeks successively, in some newspaper printed and published within the county, if any there be, and if not, then such publication shall be by written notices thereof, set up in five of the most public places of the county, or by publishing the same as above, in some newspaper printed and published in some other county of this state, as the court or clerk granting letters may direct; and such executor or administrator shall state in such notice, whether the estate is probably solvent or insolvent.

Solvency of estate.

Inventory and appraisers.

SECT. 144. The executor or administrator shall, within sixty days after his appointment, make a full, true, and perfect inventory of the estate, goods, chattels, rights, credits, moneys, and effects of the deceased to be administered, which shall have come to his possession and knowledge, and shall cause the same to be appraised by two reputable freeholders of the neighborhood, selected as appraisers thereof by such executor or administrator.

Appraisers to take oath, &c.

SECT. 145. Before proceeding to the execution of their duty, the appraisers shall take and subscribe an oath, before any officer authorized to administer oaths, that they will truly, honestly, and impartially appraise the estate, property, and effects, which shall be exhibited to them, according to the best of their judgment and ability, which oath shall be by them delivered to the executor or administrator, and by him returned and filed with the inventory and appraisement of such estate.

Appraisement.

SECT. 146. The appraisers shall, in the presence of each other, and of such executor or administrator, appraise each article, as specified in the inventory made by the executor at its true value, and set down opposite to each article respectively, the value in dollars and cents, distinctly, in figures.

Articles to be omitted in inventory, &c.

SECT. 147. Where a man having a family shall die, leaving a widow or a minor child, or children, the following articles shall be omitted in making the inventory, and shall not be considered as assets, nor be administered as such, viz:

1. All the articles of apparel and ornament of the widow, and also the apparel of the children of the deceased.

2. The wearing apparel of the deceased, which shall be distributed, at the discretion of the executor or administrator, among the family of the deceased, unless otherwise legally directed to be disposed of by the deceased.

3. The family bible, and school books used by or in the family of such deceased.

4. All the provisions on hand, provided for consumption by the family.

Real estate devised, &c. to pay debts shall be appraised.

SECT. 148. When real estate is devised to executors or administrators, or directed by the will to be sold, for the payment of debts or legacies, the same shall be included in the inventory aforesaid, and appraised at its true value by said appraisers.

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ARTICLE 6.

Annual crops shall be assets, &c.

SECT. 149. The emblements and annual crops raised by labor, and whether severed or not from the land of the deceased at the time of his death, shall be assets in the hands of the executor or administrator, and shall be included in the inventory; and the executor or administrator, or the person to whom he may sell any such emblements or annual crops, may, at all reasonable times, enter upon the lands to cultivate, preserve, gather, and carry away the same.

Contents of the inventory.

SECT. 150. Said inventory shall contain a particular statement of all bonds, mortgages, notes, and other securities for the payment of money, and all accounts belonging to the estate of the deceased, which are known to such executor or administrator, specifying the name of each debtor, the date of each bond, mortgage, note, other security, or account, respectively, the sum originally payable, the credits or other endorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraisers, may be collectable severally therefrom.

Account of moneys, &c.

SECT. 151. Such executor or administrator shall state in the inventory, an account of all moneys, whether in specie, bank bills, or other circulating medium, belonging to the estate of the deceased, which shall have come to his hands; and if none shall have come to his hands, the fact shall be so stated in such inventory.

Return of inventory.

SECT. 152. Upon the completion of the inventory and appraisement, the same shall be signed by the appraisers; and such executor or administrator shall return and file the same in the clerk's office of the proper probate court, within thirty days after the completion of the same.

Return under oath.

SECT. 153. Upon returning such inventory and appraisement, the executor or administrator shall take and subscribe an oath, endorsed on or annexed to such inventory, before the clerk of the probate court, stating that said inventory is in all respects just and true, and contains a full statement of all the property, bonds, mortgages, notes, other securities, debts, and accounts in favor of the estate of the deceased, which have come to his knowledge, and of all the moneys, bank bills, and other circulating medium, which have come into his hands, belonging to the estate of the deceased.

Appraisement of estate in different places.

SECT. 154. When such estate is situated in places distant from each other, or in different counties, the executor or administrator may, if he deem it expedient, make, return, and file separate inventories and appraisements for each or any of said places or counties, and shall have power to select different appraisers in each case of the qualifications above herein required, selected from the neighborhood in which such estate, or the greater part thereof, may be situate, to appraise the estate specified in each or any of said inventories.

Further inventories.

SECT. 155. Such executor or administrator shall also, from time to time, make further inventories of the estate of such deceased, as the same may come to his knowledge, which inventories shall be taken, the estate therein specified appraised, and

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such inventories returned and filed, under the oath of the executor or administrator, according to the provisions of this article respecting the first inventory of such estate.

Appraisers in such cases.

SECT. 156. The appraisers previously selected and sworn, may appraise the estate specified in any of such further inventories, without taking any further oath, for the discharge of such duty; or in case one or both of said appraisers shall fail, or be unable to act, the executor or administrator shall select an additional appraiser or appraisers, as the case may require, who shall take the same oath, and appraise said estate as the original appraisers might have done.

Who may return an inventory.

SECT. 157. Any one or more of the executors or administrators named in any letters may, on the neglect or refusal of the others, return an inventory and appraisement as herein required; and those so neglecting or refusing shall not afterwards interfere with the administration, or have any power over the estate of the deceased, to be administered without the consent of the acting executor or administrator filed in writing in the clerk's office of the proper probate court, or until leave to act therein is granted by an order of said court, and until such consent or leave is obtained, the executor or administrator so returning an inventory shall have the whole administration.

Specific bequests appraised, but not sold unless needed to pay debts.

SECT. 158. Articles of personal property specifically bequeathed by will, shall be inventoried and appraised in like manner as personal property of an intestate, but shall not be sold until it is found that the residue of the personal property is insufficient for the payment of debts and claims against the estate.

Specific bequests may be delivered to legatee.
See post sect. 216, 217, 359, 360.

SECT. 159. Property specifically bequeathed, may be delivered over to the legatee entitled thereto, he securing the redelivery thereof to the executor on demand, if needed for the payment of debts against the estate, or for equalizing the legacies under such will, and that he will indemnify such executor against any loss or damage on account of the delivery of such property to such legatee.

Widow may select property to the value of $100.
See post sect. 369.

SECT. 160. The widow of any person dying intestate may select and take, at any time before the return and filing of said inventory, personal property of her deceased husband, to the value of one hundred dollars, as appraised by said appraisers, for which she shall not be required to account in any manner whatever.

May select one-third of personal property, &c.

SECT. 161. The widow of any person dying intestate may select and take, at any time before the return and filing of the inventory in the clerk's office, at the valuation therein contained, one-third, or less than one-third part of the personal estate of her deceased husband, comprised in said inventory, and remaining after she shall have made her selection therefrom, to the value of one hundred dollars, as provided in the last preceding section. *

* The widow and administratrix of *A*, being in the 19th year of her age, received from her co-administrators, *B* and *C*, certain goods as her legal portion of her hus-

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ARTICLE 7.

Shall give bond &c. in such case.

SECT. 162. But before the property selected, as provided in the last preceding section, shall be delivered to her, she shall give bond to the administrator of such estate, with sufficient freehold surety or sureties, with condition that she shall refund to such administrator the amount of the appraised value thereof, or so much as may be necessary for the payment of debts, or to give to each person entitled to share in such estate his proportionate share thereof, and that she will indemnify such administrator against any loss or damage on account of the delivery of said property to her.

Two last sections apply to certain cases when there is a will.

SECT. 163. The provisions of the two last preceding sections shall apply to cases where there is a will, as to all the personal property, which is not disposed of by such will, or not disposed of otherwise than it would have been if the deceased had died intestate.

Selections of the widow noted in inventory.

SECT. 164. The selections made by the widow, according to the provisions of the preceding sections, shall be noted on the inventory, and her receipt therefor endorsed thereon or annexed thereto.

Executor may demand of widow amount &c. secured by such bond.

SECT. 165. The administrator or executor, if at any time it shall become necessary, may demand of the widow the whole amount secured by any such bond, or so much thereof as may be needed for the payment of debts or legacies, or for the adjustment of the distribution of said estate, as the case may be; and if the same is not paid, he may maintain an action for the recovery thereof on said bond.

ARTICLE VII.

Of the sale of the personal property of the testator or intestate, including executory contracts.

SECTION

166. Executor or administrator shall proceed to sell personal property.
167. Notice of sales, &c.
168. Length of credits.
169. Court may order private sale of property.
170. Notes, &c. with sureties to be taken.
171. Clerk of sale and his duties.
172. Return of the account of sales, &c.
173. Sale of crops not severed from the land may be deferred.
174. Written contracts may be sold.

SECTION

175. How assigned.
176. Effect of such assignment.
177. Contract for the purchase of land may be sold.
178. Sale by petition to the court.
179. Such sale made subject to all payments, &c. Bond required of the purchaser.
180. Court shall direct the assignment, and its effects.
181. Part of the land contracted for may be sold.

band's estate. *Held*, that in case the widow committed a devastavit of the goods, and it be considered that *B* and *C*, by the delivery of them to her, had contributed to that devastavit, *B* and *C* may be liable to the creditors of the intestate for such delivery of the goods, but they cannot be liable for it to the widow herself. *Ray* et ux, v. *Doughty* et al, 4 Blackf. 115.

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Executor or administrator shall sell, &c.

SECT. 166. Such executor or administrator, immediately after filing any such inventory and appraisement, specified in the preceding article, shall proceed to sell, at public auction, the personal property of the deceased.

Notice of sales, &c.

SECT. 167. Three weeks' previous notice of the time and place of such sale, shall be given by such executor or administrator, in some public newspaper printed and published in the county in which such sale is to be made, if any such newspaper is printed therein, and by setting up written or printed notices thereof, at three of the most public places in the township in which such property is to be sold.

Credit.

SECT. 168. A credit of not less than three, nor more than twelve months, shall be given in all such sales of personal property, by the executor or administrator, where the amount purchased exceeds three dollars.

Court may order private sale of personal property.

SECT. 169. Whenever the probate court shall be satisfied that it would be for the advantage of the estate of the deceased to sell any part of the personal property of the deceased at private sale, such court may authorize the executor or administrator to thus sell the same; but such property shall, in no case, be sold for less than its appraised value; nor shall such executor or administrator be allowed to become the purchaser thereof.

Notes, &c., with sureties, to be taken.

SECT. 170. Notes or bonds, with one or more approved sureties, shall, in all cases of sale, be taken by the executor or administrator.

Clerk of sale.

SECT. 171. An account of such sales shall be kept by some suitable clerk selected by such executor or administrator, and not interested in such estate, nor of kin to such executor or administrator; and such account shall specify the time and place and conditions of sale; the different articles sold; by whom purchased; whether paid for or secured by bond or note, and the names of the surety or sureties; which account, sworn to and subscribed by such clerk, before any officer authorized to administer oaths, shall be filed by such executor or administrator in the office of the clerk of the proper probate court, to be preserved as evidence of the sales of the property therein specified.

Return of the account of sales, &c.

SECT. 172. Such executor or administrator shall return said account of sales within six weeks after such sale; and if he fail so to do, the same proceedings shall be had against him, and the same liabilities shall be incurred on his bond as for failing to return an inventory.

Sale of crops, &c. may be deferred.

SECT. 173. The executor or administrator may defer the sale of the annual crops, raised by labor, and which are not severed from the land at the time of such sale, beyond the time herein prescribed for the sale of the personal estate; and the same may be sold before or after they are severed from the land, at the discretion of the executor or administrator, and in the mode prescribed for the sale of other personal property.

Written contracts may be sold.

SECT. 174. Written contracts, except for the purchase of land, executed in the lifetime of the deceased to him, or assigned

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or transferred to him, obligating the person or persons executing the same to the performance of any duty, condition, or matter whatever, other than the payment of a sum of money, may be appraised and sold as personal estate of the deceased.

How assigned.

SECT. 175. When such contract is so sold, the executor or administrator shall assign and deliver the same to the purchaser thereof, without any recourse against such executor or administrator, either in his individual or fiduciary character, or against the heirs, devisees, or legatees of the deceased.

Effect of such assignment.

SECT. 176. Such assignment and delivery shall vest all the rights to enforce or dispose of such contract or agreement in such purchaser which would have vested in him if the deceased were alive and had made such assignment.

Contract for the purchase of land may be sold.

SECT. 177. If any such contract was for the purchase of land, and there are payments due or to become due thereon, remaining upaid, and the court is satisfied that it would be more to the advantage of the creditors or other persons interested in such estate, that the interest of the deceased therein, under such contract, should be sold, than that the assets in the hands of the executor or administrator should be applied to the payment of such purchase money, or that the assets are insufficient to pay the same, the court may order the executor or administrator to dispose of the interest of the deceased therein, at public or private sale, as may be thought best.

Sale by petition to the court.

SECT. 178. Such sale shall be on petition to the court by the executor or administrator, making parties thereto the heirs and other persons interested in such estate, together with the person who sold the same to the deceased; and such sale shall be ordered, and security for the purchase money taken, as in sales of real estate by executors and administrators as hereinafter provided for.

Such sale made subject to all payments, &c

SECT. 179. Such sale shall be made subject to all payments that may thereafter become due upon such contract, and may include payments which are due, but remaining unpaid; and such sale shall not be confirmed by the court until the purchaser shall execute a bond to the executors or administrators of the deceased, for their benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in such land, in a penalty of double the whole amount of such payments, with condition that such purchaser will make all payments subject to which such sale has been made, and will fully and completely indemnify the executors and administrators of the deceased, and the persons so entitled, against all demands, costs, and charges, by reason of any covenant, condition, or agreement contained in such contract so sold, or by reason of any other obligation or liability of the deceased, on account of the purchase of such land, and against all other covenants and agreements of the deceased, to the vendor of such land, in relation thereto.

Bond required of the purchaser.

Court shall direct the assignment.

SECT. 180. When such sale shall be confirmed, the court shall direct the executors or administrators to execute an assign-

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ment of such contract to the purchaser, which assignment shall vest in such purchaser, his heirs, and assigns, all the right, interest, and title of the persons having the right to the interest of the deceased in the land thus sold, at the time of sale; and such purchaser shall have the same rights and remedies against the vendor of such land as the deceased would have had if he had lived.

Part of the land contracted for may be sold.

SECT. 181. If, in the opinion of the probate court, a part of such land may be sold advantageously to the interests of the estate of the deceased, so that the moneys arising from the part sold will pay the amount of the purchase money due or to become due therefor, such court may order a part only of such land to be sold; and in that case the purchaser need not execute bond as required in the section next before the last preceding section.

ARTICLE VIII.

Of the settlement and payment of debts and legacies by the executor or administrator.

SECTION

182. Debts, &c., classified.
183. No preference in debts of the same class except the fourth.
184. Liens not impaired, &c.
185. Rebate on payment of debts not due.
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212. Person collecting the same allowed costs, &c.
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214. Suit, &c., how brought.
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SECTION
216. Of discharging general and specific legacies.
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218. Debt due to executor or administrator may be disputed.

ARTICLE 8.

Debts, &c., classified. For settlement of insolvent estates. See sect. 307.

SECT. 182. Every executor or administrator shall proceed with diligence to pay the debts and just demands against the deceased, and when the estate is solvent, shall pay the same according to the following order of classes:

1. The expense of administration.
2. The funeral expenses and the expenses of the last sickness of the deceased.
3. Taxes assessed on the estate of the deceased previous to his death.
4. Judgments, decrees, mortgages, and debts of record against the deceased.
5. All judgments of courts not of record, and all recognizances, bonds, sealed instruments, notes, bills, demands, and unliquidated accounts.

No preference in debts of the same class, except the fourth. See post, sects. 185, 186, 195.

SECT. 183. No executor or administrator shall give preference in the payment of any debt, liability, judgment or decree over other debts of the same class, except those specified in the fourth class; nor shall a debt due and payable, be entitled to any preference over debts not due, of the same class; nor shall the commencement of a suit, nor the recovery of a judgment thereon, against any executor or administrator, entitle such debt to any preference over debts of the same class.

Liens not impaired, &c.

SECT. 184. Nothing contained in the last two preceding sections shall affect or impair any lien, legal or equitable, which any person may have upon the real or personal estate of the deceased.

Rebate on payment of debts not due.

SECT. 185. When any debt, not due and not bearing interest, is paid, a rebate of legal interest shall be deducted therefrom for the time unexpired.

Certain rents may be paid before debts of the fourth class.

SECT. 186. Whenever, in the opinion of the probate court, it will benefit the estate of any testator or intestate, such court may authorize the executor or administrator to pay rents, due or accruing at the time of his death upon leases held by the testator or intestate, in preference to debts of the fourth class.

Executor or administrator cannot be sued within a year.

SECT. 187. No action shall be brought against any executor or administrator, as such, until the expiration of one year from the date of his appointment.

Suits in case of death of executor, &c.

SECT. 188. Whenever any executor or administrator shall die, resign, or be removed within one year from the date of his appointment, without having fully administered the estate of the deceased, and an administrator de bonis non shall be appointed, the time which the creditors of the estate shall be prohibited from bringing their actions against such administrator de bonis non, shall be enlarged three months from the expira-

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tion of the year, from the date of the appointment of such first executor or administrator; and if the death, resignation, or removal of any executor or administrator shall take place after one year from the date of the first appointment of an executor or administrator, no action shall be brought against such administrator de bonis non, until the expiration of three months from the date of his appointment.

Statement of claim against estate to be filed in clerk's office and notice given within one year, &c.

SECT. 189. Any person having any debt or demand against the estate of the deceased, shall file a statement describing succinctly the nature and amount thereof, in the office of the clerk of the probate court having jurisdiction, within one year from the date of the appointment of the executor or administrator first appointed to administer such estate, and give notice thereof within the time aforesaid, to such executor or administrator; or in case a successor shall have been appointed by reason of such executor or administrator dying, resigning, or being removed before the expiration of a year from the date of his appointment, then by giving notice to such successor prior to the expiration of three months from the end of the year from the date of said first appointment.

How notice shall be given.

SECT. 190. The notice required by the preceding section shall be given to the executor or administrator in person, where he shall reside in the county in which administration is granted; and if he shall reside out of the county, such notice shall be filed in the office of the clerk of the proper probate court.

Creditor failing to file claim, barred of preference.

SECT. 191. Every person having any claim or debt against the estate of the deceased, who shall fail to comply with the provisions of the last preceding section, shall be barred of any preference in the payment of his debt or claim on account of its superior dignity.

But claim not defeated thereby if assets.

SECT. 192. But any such debt or claim shall not be defeated thereby, if there shall be assets in the hands of the executor or administrator out of which the same may be paid, if the same be presented for payment to the executor or administrator before he make final settlement of said estate in the probate court, and is discharged from any further duties respecting his said trust, by order of said court.

Failing to file claim, barred of costs.

SECT. 193. In case any suit shall be brought by a creditor, upon a debt or claim, a statement of which shall not have been filed in the clerk's office, and notice thereof shall not have been given to the executor or administrator, as in this article required, no costs shall be recovered in such suit against the executor or administrator, to be levied of his property or the property of the deceased.

Notice of a debt not due.

SECT. 194. A statement of a debt not due may be filed and notice given as above required.

Debt not due, may be discharged by order of the court.

SECT. 195. When any creditor of the deceased, whose right of action has not accrued, shall present his claim, if the executor or administrator refuse to pay the same, the creditor may present such claim to the probate court; and if the court shall be satisfied that such claim is just, it may order the same to be

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discharged as if it were due, after discounting interest as provided in the one hundred eighty-third and one hundred and eighty-fifth sections of this chapter.

If court refuse, claimant may sue.

SECT. 196. The refusal of the court to order such debt to be discharged, shall not affect the right of the claimant to recover, but he may sue therefor in the same manner as if his right of action had accrued, and the defendants may show any legal or equitable defence against the same in such suit, in like manner as if such claim were due.

Judgment in such case.

SECT. 197. If the plaintiff recover, he shall have judgment or decree for the amount justly due to him, discounting interest as above provided.

Heirs, &c., may secure debts not due.

SECT. 198. If the heirs, legatees, or devisees of the deceased, will execute bond with surety to the acceptance of such creditor, for the payment of his claim when it shall fall due, if the same shall prove to be a just debt, the court, on such bond being delivered and accepted, and a short statement thereof being subscribed by such creditor and filed in the probate court, shall direct an entry thereof to be made on its minutes; and such executor or administrator, and the estate of the deceased in his hands shall be discharged from all further liability respecting the same.

Suit on the bond of the heirs, &c.

SECT. 199. If said heirs or other persons executing such bond, shall fail or refuse to pay such claim when it shall fall due, the creditor may institute suit on such bond; and the persons executing the same may allege and show any matter of valid defence against such claim in bar of the plaintiff's right to recover in such suit, which the deceased might show against his right to recover in a suit on such claim, if he were alive.

Remedy against heirs, &c.

SECT. 200. If such creditor's claim shall remain unsatisfied, and the time expressed for the payment thereof shall not have expired when final settlement shall have been made of such estate in the probate court, such creditor may sue for the same according to the provisions of the sixteenth article of this chapter.

Executor or administrator not liable in case of payment before notice of claim, &c.

SECT. 201. No executor nor administrator, nor the successor of either, shall be liable to pay any debt or claim against the estate of the deceased, nor the costs of any suit to recover the same, out of his own estate, on account of having paid a debt or claim of inferior dignity thereto, or any legacy, before he shall have received actual notice that such statement of the debt or claim was filed in the clerk's office within the time above in this article specified; unless such inferior debt or claim shall have been paid before the expiration of the time within which such statement is required to be filed, and notice thereof given to the executor or administrator.

May show debts of prior class, &c., in suit against him.

SECT. 202. In any suit against an executor or administrator the defendant may show, under a plea to that effect, that there are debts of a prior class unsatisfied, or unpaid debts of the same class with that on which the suit was brought, and judgment shall be rendered only for such part of the assets in his hands as shall remain after satisfying the debts of the prior

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class, and as shall be a just proportion to the other debts of the same class with that on which the suit is brought; but the plaintiff may, as in other cases, take judgment for the whole or part of his debt to be levied of future assets.

Judgment to be levied of future assets.

Cases in which plene administravit may be pleaded.

SECT. 203. If any executor or administrator shall have paid away the whole of the estate of the deceased in the payment of debts and liabilities of the estate; or in the payment of legacies; or in distribution to the heirs or next of kin, before notice or the presentation of the debt or claim of the creditor, he shall not be required, in consequence of such new demand, to represent the estate as insolvent, but may plead plene administravit in any suit brought thereon; and upon proving such payments or distribution he shall be discharged.

Provisions of last section qualified.

SECT. 204. But the provisions of the preceding section shall not apply to debts or claims which were paid before the expiration of the time within which creditors are herein required to file a statement of their debts or claims against the estate of the deceased, in the clerk's office, and give notice thereof to the executor or administrator.

Estate paid away before notice of claims, such claims to be paid proportionally.

SECT. 205. If any executor or administrator shall have paid away, in manner aforesaid, so much of the estate and effects of the deceased, that the remainder shall be insufficient to satisfy any demand of which he shall afterwards have notice, he shall be liable to pay on such last mentioned demand only so much as may then remain in his hands; and if there be two or more such demands exhibited, which together shall exceed the amount of assets in his hands, he shall be liable to pay proportionally thereon, only to the amount of assets thus remaining.

Executor or administrator may require vouchers, &c.

SECT. 206. Upon any claim being presented, against the estate of any deceased person, the executor or administrator may require satisfactory vouchers in support thereof, or the affidavit of the claimant that such claim is justly due to him, that no payments have been made thereon, and that there are no set-offs against the same, to the knowledge of such claimant; which affidavit may be sworn to before any officer authorized to administer oaths, the costs of which shall be paid by the claimant.

Agreed case may be submitted to the court.

SECT. 207. The executor or administrator, and any claimant of any debt or demand against the estate of the deceased, may agree in writing to submit the same, or any matter in controversy touching the same, to the summary decision of the probate court; and such court may hear and determine the same, and adjudge costs, as in actions against administrators; and the judgment of the court shall be as valid and effectual, in all respects, as if the same had been rendered in a suit commenced by ordinary process.

Claims may be compounded.

SECT. 208. Where any debtor of a deceased person shall be unable to pay the whole or any part of the demand or claim of such person, or is insolvent, or in doubtful circumstances, or where any legal or equitable defence is alleged against such debt or claim, the executor or administrator, with the approba-

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tion of the proper probate court, may compound with such debtor, and give him a discharge, upon receiving the avails agreed upon in such compounding, or upon the payment of the same being sufficiently secured.

Insolvent claims, &c. may be filed for benefit of heirs, &c.

SECT. 209. Whenever any debt or demand is desperate, on account of the insolvency or doubtful circumstances of the debtor, or any legal or equitable defence is alleged against the same, on account of which it may not be deemed expedient to prosecute an action against such debtor, or whenever, by reason of the remoteness of the place of residence of any debtor, or the ignorance of the executor or administrator of his place of residence, and the smallness of such debt or claim, and the uncertainty of collecting the amount thereof, and that the attempt to collect the same would tend to injure and prejudice such estate, the executor or administrator, with the approbation of the probate court, may file the same in said court, for the benefit of the creditors, heirs, and legatees of such deceased.

Heir or creditor &c. may sue therefor.

SECT. 210. Any creditor or legatee whose debt or legacy, in whole or in part, remains unpaid, and any person entitled to share in the distribution of the estate, may sue for and recover such claim thus filed.

Amount recovered, how applied.

SECT. 211. The amount thereof, when collected, shall be paid into the proper probate court, and shall be applied, first, to the payment of debts; secondly, to the payment of legacies; thirdly, to be distributed to those entitled to distribution, according to their respective rights.

Compensation, &c.

SECT. 212. The person collecting such claim shall be entitled to retain therefrom all necessary costs, and such sum as the court shall adjudge a reasonable compensation for his services in collecting the same.

Such heir, &c. to give bond.

SECT. 213. Before any person shall receive from the clerk having the same in custody, the note, bond, obligation, security, or account on which such claim is founded, for the purpose of commencing such suit thereon, he shall execute bond, payable to the state of Indiana, in a penalty of double the amount of such claim, with sufficient approved sureties, with condition that he will faithfully account for and pay into court, all sums by him collected on such claim.

Suit, how brought.

SECT. 214. Any such person entitled to sue thereon, may bring and maintain suit for the recovery of such debt or claim, in the name of the executor or administrator of the estate of the deceased, or otherwise, for his own use; but such executor or administrator shall not be liable for costs in any such suit, out of his own property, nor the property of the deceased.

The person suing may be cited to account.

SECT. 215. The person suing on such claim, may be cited to render an account in the proper probate court; and if he fail to account, or to pay over any sum or sums of money collected thereon, he and his sureties may be sued on his said bond, at the instance of any creditor, or other person, for his proportion of the amount recovered on any such debt or claim; and the action on such bond shall be instituted, and judgment recovered,

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as in the case of suits on the bonds of executors or administrators; and execution thereon shall issue for the damages recovered, to be levied of the estate of such person and his sureties.

Of discharging general and specific legacies. See ante sect. 159—post sect. 359, 360.

SECT. 216. After the expiration of one year from the granting of letters testamentary, or of administration with the will annexed, the executor or administrator may discharge the specific legacies, and pay the general legacies bequeathed by any will, if there be sufficient assets; and if there shall not be sufficient assets to pay the general legacies, then an abatement of such general legacies shall be made, in proportion to the amount of each.

Guardian of infant legatee give bond.

SECT. 217. In case any legatee is a minor, his legacy, if so directed by the probate court, and no other provision for the payment thereof is made by the will, may be paid to the guardian of such minor; and such court may require an additional bond of such guardian, if the amount of such legacy was not taken into consideration at the time he gave bond, as guardian of such minor.

Debt to executor, &c. may be disputed, &c.

SECT. 218. If any debt or demand claimed by the executor or administrator as due to him from the deceased, shall be disputed by any person interested in the estate, the executor or administrator shall file in the probate court a statement of his claim in writing, setting forth distinctly and fully the nature and grounds thereof; and the person disputing the same may allege any matters of defence, which such deceased or his legal representatives might have alleged against the same; and the decision of such claim may be submitted to the court, or the same may be tried by a jury, as in other civil actions, and the verdict or decision thereon shall have the same force and effect as in other cases, reserving to either party the right of appeal, or to prosecute his writ of error to any superior court having jurisdiction.

ARTICLE IX.

Of the sale of lands for the payment of the debts and liabilities of any deceased person, by executors and administrators.

SECTION
219. When lands may be sold to pay debts, &c.
220. By what court sale shall be ordered.
221. Petition for such sale.
222. If a will, what part must be stated in such petition.
223. Notice of the petition given to the heirs, &c.
224. Notice to resident and unknown parties.
225. When notice not necessary.
226. Guardians ad litem.

SECTION
227. Inventory and appraisement of real estate.
228. Hearing petition, &c.
229. Order of sale.
230. Court may order the whole or part of the real estate to be sold.
231. Further order of sale.
232. Payments and credits.
233. Sale to be at public auction, unless otherwise ordered.
234. Additional bond required of the executor or administrator.

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SECTION
235. Notice of sale.
236. Further provisions as to notice.
237. Purchase money, how secured.
238. Return of sale; cases in which sale vacated.
239. Real estate shall not sell for less than if sold under execution.
240. If sureties of purchaser inadequate, other sureties to be given, or sale vacated.
241. Proceedings when re-sale ordered.
242. Order of court confirming the sale.
243. Conveyance, &c. to the purchaser.
244. Requisites of such conveyance; its effect.
245. Sale subject to liens, &c.
246. Land sold subject to a lien or equitable interest, the purchaser to be required to give bond, &c.
247. What lands, &c. subject to sale, &c.
248. Purchasers in good faith, &c. protected.
249. Executor or administrator may maintain ejectment to recover lands fraudulently conveyed by the deceased.
250. School and other lands may be sold; petition.
251. Lands may be sold to discharge a lien thereon.

SECTION
252. Executor or administrator may be be empowered by the court to lease or mortgage real estate instead of selling the same.
253. Effect of such lease or mortgage.
254. Bond required as in case of sale.
255. Executor or administrator required to account for proceeds of sale, lease, or mortgage.
256. Real estate not to be sold if heirs, &c. will secure the payment of the debts.
257. Lands devised to be sold, &c.; how sold.
258. Shall be sold under the direction of the court.
259. Executor or administrator in such case may be cited to account.
260. Failure to give notice, &c. does not vitiate sale.
261. Creditor may have the real estate converted into money.
262. Petition of such creditor.
263. Notice to parties, how given.
264. Court may require sale to be made;
265. Or remove executor or administrator.
266. Foreign executor or administrator may sell real estate.
267. Bond in such case.
268. Court where such foreign letters are filed shall have exclusive jurisdiction, &c.

SECT. 219. Whenever any executor or administrator shall discover that the personal estate of the deceased is insufficient to pay all his debts and liabilities, with the costs and charges of administering the estate, such executor or administrator may sell the real estate of the deceased for those purposes, upon obtaining an order of the proper probate court therefor, and proceeding therein in the manner provided in this article. When land may be sold to pay debts, &c.

SECT. 220. Such order shall be made by the probate court in which the letters testamentary or of administration were granted; and such court shall have power, for the purposes specified in the last preceding section, to order the sale of the real estate of the deceased, situated in any county in this state. By what court sale ordered.

SECT. 221. To obtain an order for the sale of real estate as aforesaid, the executor or administrator shall present to the probate court a petition setting forth, Petition for the sale.

1. The amount of the personal property which has come to his hands; Personal estate.

2. The application of the same, or any part thereof; Its application.

3. The debts outstanding against the estate of the deceased, so far as the same can be ascertained, and the insufficiency of the personal estate to pay the same; Debts outstanding.

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Description of the real estate.

4. A description of the real estate of the deceased, liable to be made assets for the payment of his debts, or so much thereof as the executor or administrator may deem it necessary to sell; the title or interest which the deceased had therein at his death; and if the same was inventoried and appraised with the personal property, the amount of such appraisement; and if not, the probable value thereof;

Names and ages of heirs.

5. The names and ages of the heirs, legatees, or devisees, if any, of the deceased, or if they are unknown, the fact shall be so stated.

What part of the will must be stated in such petition.

SECT. 222. If there shall be, in the will of a testator, any provision for the disposition of his estate for the payment of his debts, or any provision which may require or induce the court to marshal the assets in any manner different from that which the law would otherwise prescribe, the clause or clauses of such will relating thereto, shall be recited in said petition; and such petition shall be verified by the oath or affirmation of the executor or administrator presenting the same.

Notice of the petition given.

SECT. 223. No order for such sale of real estate shall be made until notice of the petition, and of the time and place of hearing the same, shall have been given to the heirs, devisees, and legatees interested in such estate, so that they may appear and show cause why such order should not be made.

Notice to non-resident or unknown parties.

SECT. 224. Such notice shall be served on them personally, if residents of the state, at least ten days before the time for hearing such petition; or if the parties entitled to notice are non-residents of this state, or are unknown, notice shall be given by three successive publications in a newspaper printed in the county where such petition is filed; or if none is printed therein, then in a newspaper printed in this state nearest to such county.

When notice not necessary.

SECT. 225. Whenever any of the persons of lawful age, interested in such real estate, shall signify in writing their assent to such sale, the notice required by this section may be dispensed with as to such persons.

Guardians ad litem.

SECT. 226. If it shall appear by the said petition, or otherwise, that any of the heirs, devisees, or legatees of said deceased, are minors, the court shall, before the hearing of such petition, appoint some suitable and discreet person the guardian of such minors, for the sole purpose of appearing for them and taking care of their interest in the said proceedings.

Inventory and appraisement of real estate.

SECT. 227. If an inventory and appraisement of the real estate, or any part thereof, described in said petition, shall not have been made and returned, as prescribed in the one hundred and forty-eighth section of this chapter, such executor or administrator, before the court shall proceed to hear such petition, shall make an inventory of said real estate, and cause the same to be appraised in the manner prescribed for the appraisement of personal estate, and shall file such inventory and appraisement in the office of the clerk of said court.

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ARTICLE 9.

Hearing of petition, &c.

SECT. 228. Upon the hearing of such petition, the executors or administrators presenting the same, may, at the instance of any party interested in said estate, be examined before the court, on oath, touching the matters and things contained in, or pertaining to said petition, and witnesses may be produced and be examined by any party, and process to compel their attendance and testimony may be issued and enforced as in other cases, and the depositions of witnesses, taken and certified according to law, may be read at any such hearing.

Order of sale.

SECT. 229. If the facts set forth in the petition shall appear to be true, to the satisfaction of the court, and if no sufficient cause be shown to the contrary, the court shall grant an order authorizing and empowering such executor or administrator to sell said real estate for the purposes in said petition specified.

Court may order part or the whole to be sold.

SECT. 230. The court may, in all cases when it shall appear not to be necessary to sell the whole of the estate, decide and direct what specific part of the same shall be sold; if, however, it shall be necessary to sell only a part of such real estate, and it shall appear that by such partial sale, the residue, or some specific part or piece thereof, would be greatly injured, the court may order a sale of the whole estate embraced in the petition, or of such part thereof as the court shall think necessary and most for the interest of all concerned therein.

Further order of sale.

SECT. 231. Whenever the whole of the real estate described in said petition is not directed in the first instance to be sold, the court may, from time to time, order the sale of the residue, or so much thereof as may be necessary.

Payments and credits.

SECT. 232. The court ordering such sale shall specify in such order the time or times at which the purchase money shall be paid, and if to be paid by instalments, the proportion of each instalment to the whole amount; but no credit shall be directed to be given for less than three nor more than eighteen months.

Sale to be at auction;

But may be at private sale.

SECT. 233. Every such sale shall be at public auction, at such time and place as the court shall direct, unless, in the opinion of the court, it would benefit the estate of the deceased to sell the whole or any part of the said real estate at private sale; in which case the court, if the same is asked for in the petition, may order and direct said real estate, or any part thereof, to be thus sold by the executor or administrator; but the same shall not be thus sold for less than the appraised value thereof, nor shall such executor or administrator be permitted to become the purchaser.

Additional bond required of the executor or administrator.

SECT. 234. Previous to the making of an order for any such sale, the executor or administrator shall file in the office of the clerk of said court a bond, payable to the state of Indiana, in a penalty not less than double the appraised value of the real estate to be sold, with sufficient freehold surety or sureties, to be approved by the court, and conditioned for the faithful discharge of his trusts according to law, in the sale of said estate, and in the management, disposition, and application of, and faithful accounting for, the proceeds of such sale.

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Notice of sale.

SECT. 235. Such executor or administrator shall proceed to make such sale, having first given four weeks' public notice of the time, place, and terms thereof, in some public newspaper, if there be one published in the county where such real estate is situate, and by setting up notices thereof at not less than five of the most public places in the said county, three of which shall be in the township in which such real estate is situate; or if situate in more than one township of such county, three notices as aforesaid shall be set up in each of such townships.

Further as to notice.

SECT. 236. If no newspaper is printed in said county, and in all other cases, the court may direct such other and additional notice to be given of such sale as may be deemed necessary.

Purchase money, how secured.

SECT. 237. The executor or administrator making such sale shall secure the purchase money by taking the bond or note of the purchaser, with sufficient freehold surety or sureties, to be approved by such executor or administrator.

Return of sale.

SECT. 238. The executor or administrator shall, at the next term after the sale, make return of his proceedings therein to the probate court granting the order of sale; and such court shall examine such proceedings, and may also examine witnesses, on oath, touching the same; and if fully satisfied that the proceedings were unfair, or that the sum for which the real estate, or any part thereof, was sold, was greatly disproportionate to the real value thereof, or that a sum exceeding such sum at least ten per cent., exclusive of the expenses of a new sale, can be obtained, the court may vacate such sale, in whole or in part, as the case may require.

Cases in which a sale may be vacated.

Lands not to sell for less than under execution.

SECT. 239. Real estate sold under the provisions of this article shall not be sold for a less amount, with reference to its appraised value, than real estate may be sold for at the time under execution.

If sureties of purchaser inadequate.

SECT. 240. If it shall be made to appear to said court, previous to confirming said sale, that the sureties taken on the bonds or notes of the purchaser or purchasers are insufficient or inadequate, such sale, as to every such purchaser, shall not be confirmed until he shall have given surety or sureties to the satisfaction of the court; and if such purchaser fail to give surety or sureties within the time required by the court, the sale shall be vacated as to the purchaser thus failing.

Proceedings when re-sale ordered.

SECT. 241. When any sale, in whole or in part, shall be vacated as aforesaid, the court shall direct another sale to be had, of which notice shall be given, and the sale shall be conducted in all respects as in the first order, as to the land which it is necessary to re-expose to sale.

The order confirming the sale.

SECT. 242. Whenever the court shall be satisfied with any sale, or if it should appear that the sum for which the sale was made was disproportionate to the value of the property sold, but that a greater sum, as above specified, cannot be obtained, the court shall make an order confirming such sale.

Conveyance, &c. to the purchaser.

SECT. 243. When the purchaser shall have paid the whole of the purchase money, upon his application, or the application

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of the executor or administrator to the probate court, at any term thereof, after such payment, such court shall order and direct a conveyance, assignment, or transfer, as the case may require, to be executed and delivered to such purchaser by the executor or administrator making the sale, or by such other person as the court shall appoint.

Requisites of such conveyance.

SECT. 244. Such conveyance, assignment, or transfer shall contain and set forth, at large, the name of the executor or administrator of the deceased; the names of the heirs, devisees, or legatees specified in the petition; the time of filing the petition; the order of the court directing such sale; the order confirming the same; the order directing the conveyance, assignment, or transfer; the description of the premises sold; and the person to whom such conveyance, assignment, or transfer is executed; and every such conveyance, assignment, or tranfer, executed in due form of law, shall be deemed to convey all the estate, right, and interest in the premises so sold, which the testator or intestate had therein at the time of his death.

Effect of such conveyance.

Sale, &c. subject to liens, &c.

SECT. 245. Every sale, conveyance, and assignment, made pursuant to the preceding provisions of this article, shall be subject to all charges by judgment, mortgage, or other valid lien upon the real estate so sold, existing at the death of the testator or intestate, and which has not been paid or discharged prior to the execution of such conveyance, assignment, or transfer.

Lands sold subject to a lien, or in case of an equitable interest, the purchaser may be required to give bond, &c.

SECT. 246. Whenever any executor or administrator shall sell any lands, or interest therein, subject to any lien or charge thereon, or any land possessed or held by the deceased at his death, by virtue of any contract or sale, subject to any payment or condition, such executor or administrator may take a bond of the purchaser thereof, with sufficient sureties, conditioned that such purchaser will make all payments and indemnify the said executors and administrators, and all persons interested in the estate of the deceased, against all demands, liens, obligations, liabilities, covenants, and agreements of the deceased, on account of such land.

What lands, &c. liable to sale.

SECT. 247. The real estate liable to be sold, according to the provisions of this article, shall include,

1. All the real estate held or possessed by the deceased at the time of his death, by legal or equitable title; and all rights and interests in lands, tenements, and hereditaments, which would descend to heirs.

2. School lands held on a certificate of purchase, and lands purchased of the general government or the state of Indiana, and held on a land office certificate or a certificate of purchase.

3. All lands, and any estate or interest therein, which the deceased, in his lifetime, may have conveyed or transferred with intent to defraud his creditors.

Purchasers in good faith protected.

SECT. 248. But lands thus fraudulently conveyed shall not be taken from any one who may have purchased them for a valuable consideration and in good faith, and without knowledge

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of the fraud; but such lands shall be liable to be sold only in cases in which they would have been liable to attachment and execution by a creditor of the deceased in his lifetime; and no proceeding by any executor or administrator to sell any lands so fraudulently conveyed, shall be maintained, unless the same shall be instituted within five years after the death of the testator or intestate.

Executor or administrator may recover possession, &c.

SECT. 249. If the executor or administrator shall be authorized to sell any lands thus fraudulently conveyed, he may, before sale, obtain possession by an action of ejectment, counting as upon his own seisin; or may file a bill in chancery to avoid the fraudulent conveyance.

School and other lands may be sold.

SECT. 250. When a petition to sell the real estate of the deceased is filed by an executor or administrator, as hereinbefore provided, and any of such real estate shall be school lands held on a certificate of purchase, or lands held on any other certificate except from the general government, or lands held by an equitable title, or by any contract, whether the land held on such contract has been fully paid for or not, if the same be susceptible of sale and transfer, the executor or administrator

Petition.

shall describe such real estate in said petition, and the nature of the interest which the deceased had therein; and shall also make those who hold the legal title to such land, and those who have any interest in, or are entitled to the purchase money, parties to said petition; who shall be served with process or notified as provided above respecting other parties to such petition.

Lands may be sold to discharge a lien, &c., thereon.

SECT. 251. The court, notwithstanding the preceding provisions of this article, may make such order for the sale of any such real estate or of the interest of the deceased therein, for the payment of any purchase money due thereon, or of any valid lien; and for the adjustment of the dower of the widow of the deceased in such estate, may estimate and direct the payment to her of the value of a life annuity, equal to her right of dower therein, or otherwise as the court may deem just and right between all the parties in interest.

Executor or administrator may be empowered by the court to lease or mortgage lands, &c.

SECT. 252. Upon application being made for the sale of real estate as aforesaid, the court, instead of ordering such sale may order and empower the executor or administrator to mortgage or lease the real estate of the deceased, or so much thereof as may be necessary; but no such mortgage or lease shall be authorized, unless it shall satisfactorily appear that the money necessary to be raised can be procured upon such lease or mortgage, and that the same will be for the interest and advantage of such estate.

Effect of such lease or mortgage.

SECT. 253. A lease or mortgage, executed by the executor or administrator under the authority of the court, as aforesaid, shall be as valid and effectual as if executed by the deceased previous to his death; but no such lease shall be executed for a longer period than five years.

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Bond as in case of sale.

SECT. 254. Before the court shall make any order to empower such executor or administrator to execute a lease or mortgage as aforesaid, he shall execute bond in like manner as is required previous to making an order for the sale of real estate.

Executor or administrator required to account for proceeds of sale, lease, or mortgage.

SECT. 255. The court which shall grant the order for the the mortgage, lease, or sale of real estate, shall possess the same power to cite and compel any executor or administrator to account for the proceeds of such mortgage, lease, or sale, and to compel the payment of debts and accounting for the proceeds of such sale, mortgage, or lease, as if such real estate had been originally personal estate in the hands of such executor or administrator.

Real estate not to be sold if heirs, &c., will secure the payment of the debts.

SECT. 256. An order for the sale, lease, or mortgage of such real estate, shall not be granted as above provided, if any of the persons interested in such estate shall give bond to the executor or administrator in a sum and with sureties to be approved by the court, with condition to pay all debts and liabilities that shall be eventually found to be due from the estate, with the charges of administering the same, so far as the personal estate shall not be sufficient or liable therefor.

Lands divised to be sold, &c.

SECT. 257. When real estate or any interest therein is devised by the will, or directed to be sold for the payment of debts or legacies, the executor shall proceed to dispose of the estate and apply the same according to the provisions of the will.

To be sold under the direction of the court.

SECT. 258. Sales of such real estate shall be made under the direction of the court, and conducted in like manner as herein provided in relation to sales by an executor or administrator for the payment of debts.

Executor, &c. may be cited in such case to account.

SECT. 259. When, by any last will or testament, a sale of real estate shall be ordered to be made, either for the payment of debts or legacies, the probate court in which such will was proved, shall have power to cite, upon petition, bill, or otherwise, the executors in such will named, or the administrator with the will annexed, to account for the proceeds thereof, and to compel payment or distribution thereof, and to make all necessary orders and decrees thereon, with the like power of enforcing them, as if the said proceeds had been originally personal property of the deceased in the hands of such executor or administrator.

Failure to give notice of sale, shall not vitiate sale, &c.

SECT. 260. No offence or failure in relation to the giving of notice of the sale of real estate, or the taking down or defacing of such notice, shall affect the validity of such sale to any purchaser in good faith and without notice of the irregularity.

Creditor may have the real estate converted into money.

SECT. 261. When any judgment is rendered against an executor or administrator, to be levied of the personal estate of the deceased in his hands, and execution issued thereon is returned unsatisfied, in whole or in part, for want of personal estate, and there is real estate of the deceased in this state which can be made subject to the payment of his debts, the judgment

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plaintiff may apply to the probate court granting letters on the personal estate of the deceased, to have such real estate converted into money for the discharge of such judgment.

Creditor's petition.

SECT. 262. Such petition shall set forth the date of the plaintiff's judgment; the court in which it was obtained; the amount due thereon; and the want of personal estate to satisfy the same; and shall make defendants thereto, such executors or administrators, and the heirs, devisees, and legatees of the deceased.

Notice to parties, how given.

SECT. 263. The parties made defendants thereto shall be notified of the pendency of such petition, in like manner as notice by executors or administrators proceeding to sell real estate is required to be given, according to the provisions of the preceding sections of this article; and the hearing of such application shall be conducted in all respects as on the petition of an executor or administrator.

Court may require sale to be made,

SECT. 264. If the court shall be satisfied of the truth of the plaintiff's petition, such court shall require the said executor or administrator, by an order of the court, to file his petition, and proceed as speedily as possible, to convert the real estate of the deceased into assets, for the payment of debts.

Or remove the executor or administrator.

SECT. 265. If such executor or administrator shall fail to comply with such order in any respect, the court may remove him from his said trust, and appoint some other competent person to administer such estate.

Foreign executor or administrator.

SECT. 266. When any executor or administrator shall be appointed without this state, and there shall be no executor or administrator within this state, the testator or intestate not having been at the time of his death an inhabitant of this state, the executor or administrator so appointed may file an authenticated copy of his appointment in the probate court of any county in which there may be real estate of the deceased, after which he may be authorized by such probate court to sell real estate for the payment of debts or legacies, and charges of administration, in the same manner, and upon the same terms and conditions as are prescribed in the case of an executor or administrator appointed in this state, excepting in the particulars in which a different provision is hereinafter made.

Bond in such case.

SECT. 267. Whenever it shall appear to the court that such foreign executor or administrator is bound with sufficient sureties, in the state or country in which he was appointed, to account for the proceeds of such sale for the payment of debts or legacies, and charges of administration, and a copy of such bond shall be filed in such court, duly authenticated, no further bond shall be required of him here; if, however, he is not thus sufficiently bound, he shall give bond in said court, as is required of executors and administrators appointed in this state.

The court where foreign letters filed shall have jurisdiction.

SECT. 268. All proceedings by a foreign executor or administrator in respect to the sale of land, shall be had in the probate court in which such authenticated copy of his appointment is first filed; and such probate court shall have exclusive

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jurisdiction to authorize and direct the sale of any land of the testator or intestate of such executor or administrator situated in any county in this state. ARTICLE 10.

ARTICLE X.

Of the settlement of insolvent estates.

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312. Claim not presented shall be barred, except as to further assets.
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314. Surplus, if any, how disposed of among heirs and legatees.
315. Rendering an account.

SECT. 269. As soon as any executor or administrator shall ascertain that the real and personal estate which has been or may be made assets in his hands, shall be insufficient to pay the debts, demands, and liabilities outstanding against the estate, entrusted to his administration, he shall immediately file his petition in the probate court, to settle said estate as insolvent. Petition to settle insolvent estate.

SECT. 270. Such petition shall specify,

1. The amount of debts and claims outstanding against the estate of the deceased. What the petition shall contain.

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2. A description of the real estate, if any, and the estate or interest, legal or equitable, which the deceased had therein.

3. The condition of the estate, real and personal, and the value thereof, if appraised, or if sold, the amount realized therefrom, and if any part has not been appraised, the reasonable value thereof.

4. The probable deficiency of said estate to pay the debts and claims; and such petition shall be verified by the oath of such executor or administrator.

Parties thereto. See ante sect. 223, 224, 225, and 226.

SECT. 271. Like parties to such petition shall be made, and like notice of the pendency thereof shall be given, as required in the case of a petition by an executor or administrator to sell real estate for the payment of debts.

Hearing of petition.

SECT. 272. The provisions of the two hundred and twenty-eighth section of this chapter shall apply upon the hearing of such petition.

Order of the court.

SECT. 273. If it shall appear to the court that such estate is probably insolvent, an order to that effect shall be made, directing also that notice of such insolvency be given to the creditors, requiring them to present their claims against the estate for allowance, within ten months from the date of the first publication of such notice, or they will not be entitled to payment.

Notice to creditors.

SECT. 274. The executor or administrator shall immediately cause publication of such notice to be made, as required in the last section, in some public newspaper printed and published in the county, if one is printed therein, or if not, in a newspaper nearest thereto in this state; and by causing written or printed notifications thereof to be set up in three of the most public places of the township where such deceased last dwelt.

Form of notice.

SECT. 275. The notice mentioned in the preceding section shall be in the following form:

State of Indiana, }
——— county. }

At the —— term of the —— probate court, A. D. ——, said court declared the estate of —— ——, deceased to be probably insolvent: creditors are therefore required to file their claims against the estate for allowance in the said probate court within ten months from the date hereof, or they will not be entitled to payment.

(signed) A. B.,
(date) Executor (or administrator.)

Real estate be sold.

SECT. 276. If at the time of filing such petition, the real estate shall not have been converted into assets, according to the provisions of the preceding article, the sale thereof shall be ordered by the court, upon such petition, and the sale, and all matters connected therewith, shall be conducted in all respects as sales of real estate, when the personal estate is insufficient to pay the debts.

Former order of sale to be completed.

SECT. 277. If an order for the sale thereof has been obtained previous to the filing of such petition, but the same has not been carried into effect, it shall be prosecuted to completion by the executor or administrator.

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ARTICLE 10.

Provisions to be observed.

SECT. 278. The provisions of the two hundred and forty-seventh and two hundred and forty-eighth sections of this chapter, specifying the real estate subject to be sold by the executor or administrator, shall apply in all cases in which an estate is settled as insolvent.

Suits restricted

SECT. 279. No action shall be brought against such executor or administrator after the filing of such petition,

1. Unless it be for a demand that is entitled to a preference and would not be affected by the insolvency of the estate; or

2. Unless the assets should prove to be more than sufficient to satisfy all the debts allowed by the probate court; or

3. Unless the claim has been disputed or denied by the executor or administrator before the estate is represented as insolvent; or

4. Unless the suit be brought on a claim against the estate which has been presented to the probate court for allowance in settling such estate as insolvent, and suit is ordered to be brought thereon as hereinafter provided.

Pending action discontinued if claim is not disputed.

SECT. 280. If the estate is represented as insolvent whilst an action is pending against an executor or administrator for any demand that is not entitled to preference, the action may be discontinued without the payment of costs; or if the demand is disputed, the action may be tried and determined, and judgment rendered thereon.

But may proceed if waste, &c., is alleged.

SECT. 281. If the creditor shall have alleged fraud, waste, or mal-administration in any action, pending at the time of filing such petition, or if, in any action brought subsequently, waste, fraud or mal-administration shall be alleged, and should the creditor fail to establish the same on such trial, he shall, nevertheless, have judgment or decree for any amount that may appear to be justly due to him from the estate of the deceased; but he shall not recover any costs in any such suit unless waste, fraud, or mal-administration be established.

Judgment, &c., may be filed with claims.

SECT. 282. Where a judgment or decree shall be obtained in any case specified in the last three sections, rendering the estate of the deceased liable, a claim for such amount shall be filed among the claims entitled to distribution in the settlement of such insolvent estate, and be paid according to its order of preference.

Creditor may submit contingent claim.

SECT. 283. If such judgment or decree shall not be obtained before the expiration of the time limited for filing claims against such estate, the creditor shall present to the court a statement of the nature and condition of his said claim, to be allowed when he shall have obtained a judgment or decree thereon.

Pendency of petition shall supersede execution.

SECT. 284. If any execution on a judgment or decree, not entitled to a preference, and which would be affected by the insolvency of the estate, shall issue out of any court against the executor or administrator, to be levied of assets in his hands, the clerk of the probate court shall certify under his hand and seal of office, the filing and pendency of such petition; and the same being presented to the officer in whose hands such execu-

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tion may be, he shall forthwith return such execution without further service thereof, noting in his return the facts thus certified.

Proof of publication.

SECT. 285. At the term of the court next after making publication of notice to the creditors as aforesaid, the executor or administrator shall show to the court that such publication has been made as required.

Court shall hear claims.

SECT. 286. At such term of the court, and at every term thereafter, the court shall proceed to hear and determine all such claims filed within the time permitted by law, or within such further time as the court shall allow, as provided in the next section, and which are disputed by the executor or administrator.

Further time may be given for presenting claims.

SECT. 287. If, at the expiration of the ten months allowed for the presentation of claims, the property of the deceased shall not be converted into assets for the payment of debts, or if any other circumstances exist which, in the opinion of the court, render it just and proper, such court may allow further time for presenting such claims against the estate of the deceased, not to exceed one year from the end of said ten months; and after the expiration of said ten months, or of such further time, no claims shall be received for allowance.

Claims to be filed in the clerk's office and notice given.

SECT. 288. Claims presented for allowance shall be filed with the clerk of the probate court, and ten days' notice of such filing shall be given to the executor or administrator by the creditor before the court shall proceed to hear the same.

Statement of claim, what to contain.

SECT. 289. The claimant shall, in all cases, file a short and succinct statement of his claim, or the writing or contract on which the same is founded, or a copy thereof, together with a statement of the amount demanded by him.*

Defence.

SECT. 290. The executor or administrator may show any matter of valid defence thereto without specially pleading or stating the same on the record.

Executor or administrator may allow claim.

Judgment.

SECT. 291. When any claim is presented, and is admitted to be just by the executor or administrator, the court shall allow the same; and also when the creditor shall have recovered judgment in any competent court of this state, his claim in such judgment shall be allowed unless the same, or some part thereof, shall have been paid, in which case the balance shall be allowed.

Admission of claim, how made.

SECT. 292. The admission of any claim by the executor or administrator may be made in open court, or endorsed on such claim and signed by him as such executor or administrator.

Proceedings if claim is disputed.

SECT. 293. If such claim is disputed by the executor or administrator, the court shall proceed to determine upon the validity of the same; and such claimant shall be examined under oath upon all matters touching his said claim, if the court or the executor or administrator shall require it.

*An account commencing "*A. B.*, debtor to *C. D.*" and then setting out the items, dates, sums, &c., was filed in the circuit court upon the application of an executor, under the statute of 1824: *Held*, that the account was sufficiently particular. *Sackett* v. *Wilson*, 2 Blackf. 86.

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SECT. 294. If he refuse to be thus examined, or refuse to answer any question that shall be lawfully put to him, his claim shall be disallowed. Effect of refusal to answer

SECT. 295. Witnesses may be examined on oath, or their depositions read as in the case of trials at law, in such court when investigating any such claim. Witnesses.

SECT. 296. An appeal from the decision of the probate court may be taken to the circuit court by either party, on filing bond in the manner and as in the cases of other appeals from the probate to the circuit court. Appeal to the circuit court.

SECT. 297. The circuit court shall proceed to hear and determine such claim on such appeal in all respects as the same is hereby required to be heard and determined in the probate court. How heard in the circuit court.

SECT. 298. Costs on the original proceedings before the probate court and on such appeal, shall be taxed in such manner as the court shall deem just and right; and the payment of the same may be enforced by execution or by order and attachment as the court shall direct. Costs how taxed

SECT. 299. If a jury shall be demanded by either party, upon a question proper to be tried by a jury, or if the court hearing such claim shall be satisfied at any time before the final determination thereof, that right and justice cannot be done in such proceeding, they may order all further proceedings therein to be stayed, and direct the complainant to proceed at law, or in equity, according to the usual form of action in such case. Court may require claimant to proceed in law or chancery.

SECT. 300. If, after such order, the claimant shall delay instituting such action for thirty days from the time of such order, his claim shall be forever barred. When such claim shall be barred.

SECT. 301. If in such action, the plaintiff recover, the amount for which he shall obtain a judgment or decree, shall be allowed in such proceeding, thus stayed as aforesaid. Amount recovered allowed.

SECT. 302. Costs shall be adjudged in such action, as if such proceedings to settle the estate as insolvent were not pending. Costs.

SECT. 303. In any such case, where a proper issue shall be made up by the parties, they shall have a right, by leave of the court, to have the same tried by a jury, or by the court as in other causes; and the court shall allow the amount found by the jury, or reject the claim, if the jury find against the claimant, in like manner as if the decision had been made by the court. Claim may be tried by a jury.

SECT. 304. If at the expiration of the time specified for filing claims against the estate, any person shall be bound as a surety of the deceased, or has any other contingent claim against his estate, which cannot be allowed by the court, such court, upon the presentation and proof thereof, and the special facts connected therewith, within the time allowed for the presentation and proof of claims, in ordering a dividend among the creditors, may direct a sum sufficient to cover a proportion of such contingent claim to be retained, equal to the proportionate amount paid to other creditors; or the court may defer such distribution for a reasonable time, on account of such claim. Surety of deceased may file claim, &c.

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May be allowed.

SECT. 305. When such contingent debt shall become absolute, it shall be allowed by the court, if duly proved, in like manner as if it had been presented for allowance in the first instance, and the creditor shall be entitled to a dividend thereon in the proportion which has been paid to other creditors.

Balance after paying such claim may be divided.

SECT. 306. If such claim shall not be finally established, or if it shall not exhaust the assets retained for its discharge, the amount retained, or the residue shall be divided among the other creditors, whose debts shall have been duly allowed or established.

Payment of claims

SECT. 307. As soon as the executor or administrator seeking to settle an estate as insolvent, shall have converted all the estate, real and personal, in his hands to be administered, into money, he shall pay the same into the probate court; and it shall constitute a fund for the payment of debts, demands, and claims against said estate, outstanding and remaining, in the following order:

1. Expenses of administration.
2. The funeral expenses of the deceased.
3. The expenses of the last sickness of the deceased.
4. All other debts, demands, and claims which have been allowed, in proportion to the amount of each, without regard to their dignity.

Liens, &c.

But nothing in this section shall be construed to defeat or postpone any lien, created or suffered in good faith by such decedent in his lifetime, against any portion of his estate, and remaining unsatisfied and unextinguished; and such lien shall in all cases, be satisfied out of the estate bound thereby, if the same be sufficient; and the residue of the proceeds thereof shall constitute a part of the fund aforesaid; or if the estate bound by such lien be insufficient to pay the same, the balance of such lien remaining unpaid, shall share in the fund aforesaid, in proportion to its amount, with the other debts and claims of the fourth class, specified in this section, upon being filed and allowed, as in the case of other claims.

Order of court.

SECT. 308. The court, after the expiration of the time for presenting claims against said estate, shall make an order for distributing said fund among the creditors whose claims have been allowed.

A sum may be reserved for pending claims.

SECT. 309. When the court shall order distribution to be made among the creditors, if there is any claim, or any part thereof, pending for adjudication before the same, or any other court, such probate court may make an order for distribution to the creditors whose claims have been allowed, upon directing a sum sufficient to be retained to pay upon account of such claim, a sum equal to the proportion which shall be paid to the other creditors; or may suspend such distribution for a reasonable time, on account of such claim.

Such sum, or the residue, how distributed.

SECT. 310. If the creditor shall not recover on such claim, or shall not recover an amount sufficient to exhaust the sum

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thus retained, such sum, or the residue, may be distributed among the creditors entitled thereto.

Further assets.

SECT. 311. If the assets distributed shall be insufficient to pay the whole of said debts and claims, and further assets, after such distribution shall come into the hands of such executor or administrator, the court shall make such further order for the distribution thereof as the case may require.

Claim not presented shall be barred, except as to further assets.

SECT. 312. Every creditor who shall have failed to present his claim, as provided in this article, shall be forever barred from the recovery thereof, unless the fund aforesaid shall be more than sufficient to pay and discharge the claims presented and allowed, or further assets shall come into the hands of such executor or administrator, more than sufficient to pay the claims allowed as aforesaid.

Judgment may be recovered in such cases.

SECT. 313. If in any case specified in the last preceding section, an action shall be brought against the executor or administrator, he shall be permitted to prove, under a plea to that effect, the settlement of said estate as insolvent, and the amount of assets in his hands, and thereupon judgment shall be rendered in the usual form, but execution shall not issue for more than the amount of assets in his hands; and if there is more than one valid debt or claim, the court may apportion the amount between them.

Surplus, if any, how disposed of among heirs and legatees.

SECT. 314. If, after the payment of the expenses, and all debts and demands against the estate, when the real estate of the deceased has been sold, as provided in this article, there be any overplus, the same shall be distributed among the heirs and devisees of the deceased, or the persons claiming under them, in proportion to their respective rights in the premises sold.

Rendering an account.

SECT. 315. The court shall have the power and authority to require and enforce the rendering of an account in settling an insolvent estate as in other cases.

ARTICLE XI.

Of the disposition of the estates of persons dying without heirs, devisees, or legatees.

SECTION

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320. If estate not claimed within five years, proceeds to be paid into the state treasury.
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322. Auditor of public accounts may sue therefor.
323. Treasurer of state shall give an acquittance.
324. Special duties of clerks in such cases.
325. Unknown heir may claim such estate.

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Estates of persons dying without heirs, &c.

SECT. 316. If any person shall die without any known heirs, devisees, or legatees, or without any such heirs, devisees, or legatees, who are residents of the United States, and who shall fail to apply for or take possession of his real estate within five years after his death, the executor or administrator entrusted with the administration of the personal estate of such person shall convert all the real estate of the deceased into money by making sale thereof, upon an order for that purpose obtained from the probate court.

Notice to sell real estate.

SECT. 317. Before the court shall make an order for the sale of real estate specified in the last preceding section, such executor or administrator shall cause a notice of his intended application to be published for six weeks successively in one or more newspapers in this or any other state of the United States, as the court shall direct; and requiring all persons interested in said estate to appear and show cause why the same shall not be disposed of according to the statute of this state respecting the estates of persons dying intestate and without heirs.

Order of sale.

SECT. 318. The court being satisfied that due publication has been made as aforesaid, and no sufficient cause having been shown why such real estate should not be sold, shall make an order for the sale thereof; and such sale, the confirmation thereof, and the conveyance to the purchaser, shall be made and governed in all respects as sales of real estate herein authorized to be made for the payment of the debts of a deceased person.

Personal estate.

SECT. 319. Such executor or administrator shall administer the personal estate of such person as in other cases, and in like manner apply the proceeds to the payment of the debts and claims against his estate; and if the personal estate is insufficient to pay the same, the executor or administrator may convert the real estate into money, as above provided in other cases of the insufficiency of the personal estate to pay the debts of the deceased.

If estate, &c. not claimed within five years, to be paid into the state treasury.

SECT. 320. If no heir, devisee, or legatee entitled to receive the proceeds of the personal estate, and of the real estate sold for the payment of debts, and remaining after the payment of the same, shall apply therefor until the lapse of five years from the death of such person, or if the real estate shall have been sold as provided in the preceding articles of this chapter, the executor or administrator having paid all expenses and charges of administration, and all other claims and demands against the estate of the deceased, and having rendered a full and true account to the probate court, such court shall make an order directing him to pay the residue of the proceeds of said real and personal estate into the treasury of this state, to be credited on the books of the treasurer of state to the unknown heirs of such person.

Notice before such payment in certain cases.

SECT. 321. But before any executor or administrator shall be authorized by an order of the court, to pay the proceeds of the personal estate or the residue of the real estate remaining

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after the payment of debts, except in cases of the sale of real estate, made on an application to sell the same for want of known heirs, devisees, or legatees, publication thereof shall have been made according to the provisions of the three hundred and seventeenth section of this chapter.

Auditor of state may sue therefor.

SECT. 322. If any executor or administrator shall fail to comply with the provisions of this article respecting the estates of persons dying without known heirs, devisees, or legatees, residents of the United States; or shall fail to convert the same into money; or, after an order of the court to that effect, shall fail to pay the same into the state treasury within ninety days after the making of the order to pay the same into the state treasury, it shall be the duty of the auditor of public accounts to institute, and he may maintain, in the name of the state of Indiana, all necessary suits and proceedings against such executor or administrator, or him and his sureties, for the settlement of said estate and the recovery thereof, to be paid into the state treasury as aforesaid.

Treasurer of state shall give an acquittance.

SECT. 323. When the proceeds of any estate shall be paid, as aforesaid, into the state treasury by any executor or administrator, or by the officer of any court, or other person paying on the recovery thereof as provided in the preceding section, the treasurer of state shall receipt therefor as in other cases; and the auditor's quietus issued thereupon shall be a sufficient acquittance to the amount therein specified, to the person paying as aforesaid.

Special duties of clerks.

SECT. 324. It is hereby made the duty of the clerks of the several probate courts of this state, to transmit without delay, to the auditor of public accounts, all information which shall come to their knowledge touching the estate of persons dying without heirs, devisees, or legatees resident of the United States, and of all estates which remain unclaimed by any heirs, devisees, or legatees, as aforesaid

Unknown heir may claim such estate.

SECT. 325. Any unknown heir or legatee, or non-resident heir or legatee, may, at any time after the payment of such estate into the treasury, file his petition in the court in which such estate was settled, making the auditor of public accounts a party to such proceeding; and upon proving himself to be entitled to said estate, the court shall order the estate to be paid to him; and upon his filing a copy of such order in the office of such auditor, duly certified and attested by the clerk of the said court under his seal of office, the said auditor shall audit and give his warrant for the same upon the treasurer of state, who shall pay said estate to the person thus entitling himself thereto.

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ARTICLE XII.

Of compelling executors or administrators, whose authority has ceased, to account.

SECTION
326. Removed executor, or administrator, &c. may be compelled to account to his successor, surviving executor, &c.
327. Citation.
328. To pay over money and deliver estate, &c.
329. Liable to an action, and by whom.
330. Liable to creditors, &c.
331. Proceedings, &c. by attachment authorized.

Removed executor or administrator, &c. compelled to account to his successor, &c.

SECT. 326. Whenever the authority of an executor or administrator shall cease, or be revoked, or superseded, for any reason, the surviving executor or administrator, or successor, as the case may be, shall have full power and authority, and it shall be his duty to cause such executor or administrator whose authority has ceased, been revoked, or superseded, to account on oath before the court, to such surviving executor or administrator, or successor, for all the goods, chattels, rights, property, money, effects, and assets of the deceased, which may have come into his hands.

Citation.

SECT. 327. The citation to appear and render such account in such case, shall be served at least twenty days before the term of the court at which such account shall be required to be rendered; and all or any of the persons interested in such estate, shall have the like right to appear and controvert the same, or any part thereof, as is provided in cases where an executor or administrator makes a final settlement of any account rendered by him.

To pay over money and deliver estate, &c.

SECT. 328. Whenever the account of any such executor or administrator shall have been rendered and settled, he shall, if the same has not been done before, pay over to the remaining executor or administrator, or his successor, as the case may be, all moneys belonging to said estate in his hands, and deliver to such executor, or administrator, or successor, all the property, notes, obligations, evidences of debt, assets, claims, goods, chattels, rights, credits, and effects of the estate of the deceased, to be administered, in his hands, and the notes and bonds taken of purchasers of property of the deceased, sold by such executor or administrator, according to the order and direction of the court in the premises.

Liable to an action, and by whom.

SECT. 329. If any such executor or administrator shall fail to comply with the provisions of the last preceding section, or shall have abused his said trust, by waste, fraud, negligence, or other mal-administration, he shall be liable therefor on his bond, and such remaining executor or administrator, or such successor, may maintain all necessary and proper suits and proceedings against him, on his bond, or otherwise.

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ARTICLE 13.

Liable to creditors, &c.

SECT. 330. When an executor or administrator shall have ceased to act, either through being removed or superseded, he, as well as his sureties, shall still be liable, in like manner, and to the same actions, to all persons interested in the estate of the deceased, as heirs, devisees, legatees, creditors, or otherwise, who may be injured by any of his acts in said trust, or by any omission of duty therein, or abuses thereof, as if he were still the executor or administrator of such estate.

Proceedings by attachment, &c.

SECT. 331. Whenever the probate court shall be satisfied that any removed executor or administrator has any goods, moneys, rights, or effects, or evidences of debt, or securities thereof, in his hands, such court shall have power to compel the payment or delivery thereof to the executor or administrator entitled thereto, by attachment and distress infinite, of the person and goods of such removed executor or administrator.

ARTICLE XIII.

Of executors and administrators rendering their accounts, and making final settlement.

SECTION

332. Executor and administrator not liable for debts uncollected, without his fault.
333. Case of a debtor becoming insolvent.
334. Executor and administrator shall account for profit, interest, &c.
335. Chargeable with goods, &c. not inventoried.
336. Return their first account within eighteen months.
337. Further accounts.
338. Court may compel them to account, &c.
339. Vouchers, required, except in certain cases.
340. When costs shall be allowed in an account.
341. Account of joint executors or administrators.
342. What commissions shall be allowed as compensation, &c.
343. Further allowances may be made.
344. Case of compensation by the will.
345. Who may contest settlement of account.
346. Executor or administrator may have the widow, heirs, &c. summoned.
347. Service of summons—publication of notice.

SECTION

348. Testimony, &c. on the hearing.
349. Heir advanced, to answer on oath.
350. Or such oath may be waived.
351. Heirs, &c. may submit questions, &c. to the court
352. Hearing of case may be adjourned.
353. Testimony and attendance of witnesses—adverse party may be examined.
354. Jury trial allowed, &c.
355. Heirs, &c. in certain cases need not be summoned.
356. Order of distribution.
357. Settlement may be opened within five years, excepting the rights of infants, &c.
358. How far errors may be corrected, &c.
359. Part of a legacy or distributive share may be paid before final settlement.
360. Court may allow such payment.
361. How estate of non-resident shall be disposed of.
362. Residue may be paid or transmitted to foreign executor or administrator.
363. How disposed of if deceased non-resident died insolvent.
364. How payments to resident and foreign creditors shall be adjusted.

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SECTION
365. Amount, &c. may in such case be paid to foreign creditor, or transmitted to foreign executor or administrator.
366. How far any order of the court in the settlement of an estate shall be a justification to the executor or administrator.

Executor or administrator not liable for debts uncollected without his fault.

SECT. 332. No executor or administrator shall be accountable for any debts, inventoried as due to the deceased, if it shall appear that they remain due and uncollected, without the fault of such executor or administrator.

Case of a debtor becoming insolvent.

SECT. 333. Where an executor or administrator shall take a note or obligation of a purchaser of personal estate of the deceased, with surety for the payment of the purchase money, and the persons executing such note or obligation become insolvent and unable to pay the same, or any part thereof, before the same falls due or can be collected, the probate court may allow such executor or administrator a credit for the amount thereof, or so much as may remain unpaid, if he shall show to the satisfaction of the court, that he used due care and caution in taking such note or obligation, and that the surety or sureties were solvent at the time of executing the same, also that due diligence has been used to collect the amount due thereon.

Shall account for profit, interest, &c.

SECT. 334. No profit shall be made by executors or administrators, by the increase, nor shall they sustain any loss by the decrease or destruction, without their fault, of any part of the estate of the deceased; and if they shall sell any part of the personal estate for more than the appraised value, they shall account for the excess; and if they shall sell any for less than the appraised value, they shall account therefor at the price at which the same was sold, unless such sale shall be shown to have been unfairly or illegally made, in which case they shall account therefor at the appraised value thereof. *

How far liable in case of sales.

Chargeable with goods, &c. not inventoried.

SECT. 335. Every executor and administrator shall be chargeable, at their value, with all goods, chattels, rights, credits, moneys, and effects of the deceased, which shall have come to their hands, and which by law are to be administered, although they may not have been included in the inventory; also, with all the proceeds of real estate sold, leased, or mortgaged, for the payment of debts or legacies, and with all the interest, income, and profit which shall in any way, come to their hands, from the estate of the deceased.

* If an administrator authorized by an order of court to sell, at public sale, the real estate of his intestate, for the payment of debts, purchase the lands himself at the sale, and afterwards sell the same at an advanced price, he is liable to account for the profits to the heirs, for whose benefit the administrator's purchase must be considered to have been made; and the effect is the same, whether the purchase be made by the administrator alone, or jointly with another; or whether it be made in person or by an agent. *Brackenridge* v. *Holland* et al., 2 Blackf. 377.

If, owing to the conduct of the administrator, any uncertainty exist as to the amount of the profits made by him on the purchase, he will be chargeable with the largest amount which from the circumstances he can be presumed to have realized. *Brackenridge* v. *Holland*, et al., 2 Blackf. 377.

An administrator is liable for any interest he may have collected on the debts due to the estate. *Ray* et ux., v. *Doughty* et al., 4 Blackf. 115.

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ARTICLE 13.

Return his first account within eighteen months

Further accounts.

SECT. 336. Every executor or administrator shall, within eighteen months after the granting of letters to him, render his first account of his administration on oath; and he shall in like manner render such further accounts of his administration from time to time, as may be necessary or convenient; or where required by the probate court, until the estate shall be wholly settled; and he may be examined on oath by the judge of said court, upon any matters relating to his said accounts.

Time beyond eighteen months may be granted by the court.

SECT. 337. If such executor or administrator shall satisfy the court that he has used due diligence, and that said estate cannot be settled at the expiration of said eighteen months, the court may grant such further time as may be just and reasonable, and may extend the same, if it be necessary.

Court may compel an accounting.

SECT. 338. In case of any unnecessary or unreasonable delay, on the part of such executor or administrator, the court may, by citation and attachment, compel him to render his account.

Vouchers required except in certain cases.

SECT. 339. In rendering an account, every executor or administrator shall produce vouchers for all debts, claims, and legacies paid, and for all charges and expenses; which vouchers shall be filed and preserved in said court, except that on the settlement of an account, the executor or administrator may be allowed any item of expenditure not exceeding five dollars, for which no voucher is produced, if such item be supported by his own oath positively to the fact of payment, specifying when and to whom such payment was made, and if such oath be uncontradicted; but such items allowed shall not in all exceed one hundred dollars, for payments in behalf of any one estate.

When costs shall be allowed in his account.

SECT. 340. If judgment shall be recovered against an executor or administrator for costs, in any suit instituted by or against him in that capacity, such costs shall be allowed to him in his administration account, unless it shall appear to the probate court that the suit was instituted or defended unnecessarily, or without any reasonable cause.

Account of joint executors or administrators.

SECT. 341. When any account is rendered in the probate court, by two or more joint executors or administrators, the court in its discretion may allow the same, upon the oath of any one of them.

What commissions shall be allowed.

SECT. 342. Executors and administrators shall be allowed commissions upon the amount of personal estate collected and accounted for by them, not to exceed the amounts specified as follows, to-wit:

1. For the first thousand dollars, at a rate of not more than five per centum.

2. For all above that sum, and not exceeding five thousand dollars, not to exceed two per cent.

3. For all above five thousand dollars, one per cent.

And upon all moneys collected and accounted for, on the sales of real estate, the executor or administrator shall be allowed commissions, not to exceed as follows:

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1. For the first thousand dollars, not to exceed two and a half per cent.

2. For all above that sum, one per cent.

Further allowances may be made.

SECT. 343. In all cases the court shall make such further allowances as shall be necessary for extraordinary expenses, or services not required of an executor or administrator, in the common course of his duty.*

Case of compensation by the will.

SECT. 344. When provision shall be made by will for compensation to any executor, the same shall be deemed a full satisfaction for his services, in lieu of the aforesaid commissions, or his share thereof, unless he shall by an instrument filed in the probate court, renounce all claim to such compensation given by the will.

Who may contest settlement of account.

SECT. 345. Upon the final settlement of any estate, or the settlement of any account, rendered by any executor or administrator, whether such settlement is made upon bill or petition filed, or otherwise, the widow, creditors, heirs, devisees, or legatees of the deceased, or any of them, interested in the matter, submitted for settlement, may attend and contest the same.

Executor or administrator may have the widow, heirs, &c. summoned.

SECT. 346. The executor or administrator, whether he shall have been cited to make final settlement of the estate, or shall voluntarily appear to make such settlement, may have the widow and heirs of the deceased, and any creditor of the estate, and also the devisees and legatees, if there be any, summoned to appear in said court, to attend to the settlement of his accounts, upon his filing in such court a petition, setting forth any matters relating to said estate, or to any of his accounts, acts, or proceedings, necessary to be answered by such widow, heirs, devisees, or legatees, or to be determined by said court.

Service of summons.

SECT. 347. The summons in such case shall be personally served on those named as defendants in such petition, and who are residents of the state, at least fifteen days previous to the term of the court at which such petition shall be heard; and if

Publication of notice.

any are non-residents, notice thereof shall be published for three weeks successively, at least thirty days prior to such term of the court, in a newspaper printed and published in such county; or if none is printed therein, then a newspaper nearest thereto, printed in the state.

Testimony, &c. on the hearing.

SECT. 348. Such defendants may be required to answer the matters and things contained in such petition on oath; and on the hearing thereof, testimony may be adduced by the parties, as to the rights, claims, and identity of the said widow, heirs, devisees, legatees, or creditors, which testimony may be either oral or written, or by depositions taken and certified according to law, as provided in other cases.

Heir advanced, to answer on oath.

SECT. 349. When any child or heir of such deceased person shall have been advanced by the deceased by any settle-

* It appeared, on the settlement of an estate in the probate court, that the payments which had been made by an administrator, amounted to $3,010. *Held*, that an allowance to the administrator of 180 dollars, as commissions, was not objectionable as being too high. *Ray* et ux., v. *Doughty* et al., 4 Blackf. 115.

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ment or portion of real or personal estate, such child or heir may be required, upon bill filed or on the petition aforesaid, to answer on oath as to such advances; and testimony to establish or disprove the allegation of such advancement may be adduced in like manner as provided in the last preceding section. ARTICLE 13.

Or such oath may be waived.

SECT. 350. The executor or administrator or other person filing such bill or petition as herein provided, may waive the answer of such heir or child on oath; and in such case the court shall determine the same according to the legal proofs adduced by the parties.

Heirs, &c., may submit questions to the court.

SECT. 351. The widow of the deceased, his heirs and legatees, or any of them interested in such estate, may file, in the proper probate court, their joint or several petitions, alleging any questions of law or of fact, proper for the decision of such court, respecting said estate, and claiming their respective distributive shares or legacies, of which such executor or administrator shall have twenty days' notice, by summons, previous to the term of the court at which the same is to be heard, and he may be required to answer the same and the matters therein contained proper to be answered, on oath.

Hearing may be adjourned.

SECT. 352. In the proceedings specified in the preceding sections of this article, the hearing of the allegations, examinations, and proofs of the respective parties, may be adjourned from time to time by the court on such terms and conditions as may be just and reasonable.

Testimony and attendance of witnesses.

SECT. 353. When the proceedings in the settlement of the accounts rendered by an executor or administrator are contested upon petition filed or otherwise, except by bill in chancery, or when any matter or claim of any creditor, legatee devisee, heir, or widow of the deceased is contested before the probate court, the parties interested therein shall be entitled to process to summon and compel the attendance of witnesses; and the testimony adduced, if otherwise legal, may be oral, written, or by depositions taken as depositions are required to be taken in suits at law; and any person thus interested shall have the right if he desire it, to have the opposing or adverse party examined on oath before the court touching the matters in controversy.

Adverse party may be examined.

Jury allowed.

SECT. 354. Upon any question of fact arising, proper to be tried by a jury, the court, if the same have not been done, may direct an issue to be made up, or a comprehensive note and entry embracing the point in controversy, and may submit the same to be tried by a jury, subject to the same rules and provisions as in other cases of trial by jury.

Heirs, &c., need not be summoned.

SECT. 355. The court, in its discretion, may allow the settlement of the estate of a deceased person without requiring the heirs, devisees, legatees, or other persons interested in such estate to be cited to appear at such settlement,

Order of distribution.

SECT. 356. Whenever a final account of the estate shall be rendered and settled, if any part of the estate remain to be dis-

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tributed, the court shall make an order for the distribution thereof among those entitled thereto according to their respective rights.

Settlement may be opened within five years.

SECT. 357. Whenever a final settlement of any estate or of any account thereof, rendered by the executor or administrator, shall be made in the absence of any person interested therein, without personal, legal notice to him, such settlement, or so much thereof as may affect him adversely, may be opened on the application of such person, upon bill filed in the court in which such settlement was made, setting forth fully and particularly the items and things complained of; such bill to be filed at any time within five years from the making of such settlement, and not afterwards, unless such person be an infant, non compos mentis, or without the United States on public business, then, in any such case, such person shall be permitted to open such settlement as aforesaid within five years after such disability may be removed, and not afterwards.*

Excepting the rights of infants, etc.

How far errors may be corrected, etc.

SECT. 358. In every settlement of an account rendered by an executor or administrator, all his former accounts may be so far opened as to correct any error or mistake therein; excepting that any matter in dispute between two parties which had been previously heard and determined by the court, shall not be brought again in question by either of the same parties without notice to the opposite party, and by leave of the court.

Part of a legacy, etc., may be paid before final settlement

See ante, sects. 159, 216, 217

SECT. 359. Any person entitled to any legacy, or to a distributive share of the estate of any deceased person, at any time previous to the settlement of such estate in the probate court, may apply to such court, either in person or by guardian, after giving reasonable notice to the executor or administrator, to be allowed to receive a portion of such legacy or distributive share for his support.

Court may allow such payment.

SECT. 360. If it appear to the court that there is at least one third more of assets in the hands of such executor or administrator than will be sufficient to pay all debts, legacies, and claims against the estate then known, such court may, in its discretion, allow such portion of such legacy or distributive share to be advanced, as may be necessary and proper for the support of the person entitled thereto, upon satisfactory bond being executed to such executor or administrator, with sufficient surety, for the return of such portion with interest, whenever necessary for the payment of debts, legacies, or claims,

*The settlement of an administrator's accounts in the the probate court is prima facie correct; and a court of chancery will not interfere with it except in clear cases of mistake or fraud. *Allen* v. *Clark et al.*, 2 Blackf. 343. *Ray et ux.* v. *Doughty et al.*, 4 Blackf. 115.

The jurisdiction of a court of chancery extends to the accounts of administrators though settled in the probate court, if there be evidently a mistake or fraud in the settlement. *Brackenridge* v. *Holland et al.*, 2 Blackf. 377.

The probate court, on the settlement of an estate of which *A.* and *B.* were administrators, had charged *A.* with only 3,010 dollars, although the inventory and sale-bill, signed by both the administrators, amounted to a much larger sum. *Held*, that the record of the probate court, in the absence of all proof except the inventory and sale-bill, was conclusive proof that the sum charged to *A.* was the whole amount that had come into his hands to be administered. *Ray et ux.* v. *Doughty et al.*, 4 Blackf. 115.

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or to equalize the shares and legacies among those entitled thereto.

How estate of non-resident shall be disposed of.

SECT. 361. When administration shall be taken in this state on the estate of any person who was the inhabitant of any other state or country, his personal estate found here after payment of his debts, shall be disposed of according to his last will, if he left any duly executed according to the laws of this state; and if he left no such will, such personal estate shall be distributed and disposed of according to the laws of the state or country of which he was an inhabitant.

Residue may be transmitted to foreign executor or administrator.

SECT. 362. Upon the settlement of such an estate, and after the payment of all debts for which the same is liable in this state, the residue of the personal estate, if any, may be distributed and disposed of as specified in the last preceding section, by the probate court in which the same is settled; or it may be transmitted or paid over to the executor or administrator, if there be any, of the state or country where the deceased had his domicil, to be there disposed of according to the law of the place as such probate court, under the circumstances of the case, shall think best.

How disposed of if deceased insolvent.

SECT. 363. If such deceased person died insolvent, his estate found in this state shall, as far as practicable, be so disposed of that all his creditors, here and elsewhere, may receive each an equal share in proportion to the amount of their respective debts and claims.

How payments to resident and foreign creditors shall be adjusted.

SECT. 364. To this end no settlement nor final disposition of any such person's estate in this state shall be permitted by the probate court until all his creditors, who are inhabitants of this state, shall have received the just proportion that they would be entitled to receive, if the whole estate of the deceased, wherever found, that is applicable to the payment of common creditors, had been divided among all the said creditors in proportion to their respective debts and claims, according to the rules prescribed in this chapter for the payment of the debts of a deceased person whose estate is insolvent; and in every such case no creditor, not being a citizen of this state, shall be paid out of the assets found in this state, until those who are citizens shall have received their just proportion as provided in this section.

May be paid to foreign creditors or transmitted to foreign executors or administrators.

SECT. 365. In such case the residue after such payments to creditors who are citizens of this state, according to the proportion aforesaid, may be paid to the foreign creditor in proportion to the amount of their respective claims; but such payment to foreign creditors shall be so made that no one shall receive more than would be due to him if the whole estate of the deceased were divided rateably among all the creditors; or the court may direct such residue to be transmitted or paid over to the foreign executor or administrator, if there be any such; or if there be none such, and such residue remain uncalled for by any person entitled thereto, for the space of two years, the court may order the same to be paid rateably to the creditors

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whose claims shall have been allowed in this state in proportion to their respective amounts.

How far any order of the court in settling the estate shall be a justification to the executor or administrator.

SECT. 366. The order or decree of the probate court, in making distribution of the estate of the deceased, or any order or allowance of the probate court of any debt, claim, or demand against the estate of the deceased, and every allowance and settlement by the probate court of any account rendered by such executor or administrator in said court, if such order, allowance, or settlement was obtained or suffered by such executor or administrator in good faith, without fraud, collusion, or negligence, shall be conclusive evidence in his favor, and a full justification for him in respect to any payment made in pursuance of any such order or allowance, and in respect to any matters settled, adjusted, or disposed of by any such order, allowance, or settlement.

ARTICLE XIV.

Of making distribution of the surplus of the estate of the deceased, and the payment of legacies.

SECTION
367. Order of distribution; who entitled.
368. Definitions and rules governing distribution, &c.
369. Widow may take one hundred dollars at distribution, if not previously taken.
370. Heirs, creditors, &c. may take claim due the estate, &c.;
SECTION
371. And may sue thereon.
372. Advancements.
373. Last section qualified and restricted.
374. Security may be required of heirs, &c.
375. Estates of married women.

Order of distribution.

SECT. 367. Where the deceased shall have died intestate, the surplus of the estate remaining after the payment of all debts, and in case of a will, the surplus remaining after the payment of all debts and legacies, if not bequeathed by the will, shall be distributed to the widow, children, or next of kin to the deceased, as follows:

To the widow and children.

1. One third part thereof to the widow, and the residue, in equal parts, to the children, and to the issue of any deceased child, by right of representation.

To the widow, father, mother, and collateral relations.

2. If there be no children of the deceased, nor the descendants of such children, but the widow and father of the deceased be living, one half of such surplus shall go to the widow, and the other half shall go to the father; or if in such case the father be dead, and them other and brothers and sisters of the deceased, or the descendants of any brother or sister, be living, such other half shall go equally to the mother, brothers, and sisters who are living, and to the descendants of any deceased brother or sister by right of representation: if there be no father, brothers, or sisters, nor the descendants of any brother or sister, but the

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mother of the deceased is living, two thirds of such surplus shall go to the widow, and the remaining third part shall go to the mother.

To the widow.

3. If the widow be living, and there are neither children of the deceased, nor their descendants, nor father, nor mother, nor brothers, nor sisters, nor the descendants of any brother or sister of the deceased, the whole of such surplus shall go to the widow.

To the children of the deceased.

4. If there be no widow, but there be children of the deceased, or their descendants, the whole surplus shall be distributed in equal shares to the children who are living and to the descendants of a deceased child by right of representation.

To the father, mother, and collateral relatives.

5. If there shall be neither widow nor children, nor the descendants of any child of the deceased, but there be a father, brothers, and sisters, or the descendants of any brother or sister of the deceased, one half of such surplus shall go to the father, and the other half shall go to the brothers and sisters who are living, and to the descendants of any deceased brother or sister by right of representation: if in such case the father be dead but the mother be alive, she shall take the part to which the father, if alive, would have been entitled: if in such case the father and the mother of the deceased be both dead, the whole of said surplus shall go to said brothers and sisters who are living, and to the descendants of any brother or sister who is dead, by right of representation: if there be no brothers nor sisters, nor their descendants, but the father of the deceased is living, the whole of said surplus shall go the father: if the father also be dead, the whole of such surplus shall go to the mother of the deceased.

When the estate shall go equally to the paternal and maternal kindred.

6. If there be no relatives of the deceased, nor their descendants, as enumerated in the preceding clauses of this section, then such surplus shall be divided into two equal parts, one of which shall be distributed to the next of kin to the deceased, in equal degree, of the paternal kindred; and the other part to the next of kin to the deceased, in equal degree, of the maternal kindred: if there be no paternal kindred, the whole of such surplus shall be distributed to the next of kin to the deceased, in equal degree, of the maternal kindred: if there be no maternal kindred, such surplus shall all be distributed to the next of kin to the deceased, in equal degree, of the paternal kindred.

If the deceased be illegitimate.

7. If the deceased were illegitimate, and shall have left no children, nor their descendants, such surplus shall go to his mother; or if she be dead, then in equal shares to his brothers and sisters, the children of his said mother, who are living, and to the descendants of any of them who are dead, by right of representation: if there be no such relatives, nor their descendants, as above specified, then such surplus shall go to the next of kin of the deceased, in equal degree, of the maternal kindred.

To be paid into state treasury

8. If there be no person entitled to such surplus of the personal estate of any deceased person, as provided in this section,

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for want of heirs, &c.

the same shall be paid into the state treasury and be applied exclusively to the support of common schools in the several congressional townships of the county in which such estate was settled, in the manner which may be directed by law.

Definitions and rules governing distribution, &c.

SECT. 368. The following rules shall apply in the construction of the last preceding section:

'By right of representation' defined.

1. Distribution "by the right of representation," as specified in said section, shall be deemed to mean that the descendants of any deceased heir shall receive the share of such surplus which their parent, if living, would have taken.

When to apply.

2. Distribution by the right of representation shall not be admitted except in the cases specified in said section.

'Kindred in equal degree,' &c.

3. In the cases specified in the sixth clause of the last preceding section, when there are two or more such kindred in equal degree to the deceased, but claiming through different ancestors, those who claim through the ancestor nearest to the deceased shall be preferred to those claiming through the ancestor who is more remote: when there are two or more entitled to share in such surplus as next of kin to the deceased, their share shall be equal.

How degrees shall be computed.

4. The degrees of kindred shall be computed according to the rules of the civil law.

Relatives of the half blood.

5. Relatives of the half blood shall take in the distribution equally with those of the whole blood, whether they take in their own right or by right of representation.

Posthumous heirs.

6. Descendants and relatives of the deceased, begotten before his death, but born thereafter, shall take in the same manner as if they had been born in his lifetime and had survived him.

Illegitimate children.

7. Every illegitimate child shall share in the distribution of the personal estate of his mother, as if he had been born in lawful wedlock.

When deemed legitimate.

8. Where a man shall marry a woman who has borne an illegitimate child previous to such marriage, and he shall acknowledge himself to be the father of such child, such child shall be deemed legitimate.

Widow may take one hundred dollars at distribution, &c.

SECT. 369. In all cases in which the widow shall not have taken any part of the personal estate of the deceased, when entitled thereto, as provided in the one hundred and sixtieth section of this chapter, she shall be entitled to demand and receive of said surplus, at any time before distribution thereof shall be made, the sum of one hundred dollars; or if she shall have taken a part of the personal estate thus allowed, she shall be entitled to demand and receive so much of said surplus as, added to the value of the personal estate which she may have thus taken, will amount to one hundred dollars; and she shall in no case be liable to account for the amount which she shall thus receive.

Heirs, creditors, &c. may take claim, &c. due the estate.

SECT. 370. Any debt, claim, contract, mortgage, bond, note, or security for the payment of any sum of money, in the hands of the executor or administrator, not yet due, may, with the approbation of the probate court, be delivered by the executor

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or administrator to any creditor, heir, or legatee of the deceased who may be willing to accept the same towards the payment of his debt, claim, or distributive share, in lieu of so much money, as such debt, claim, contract, mortgage, bond, note, or security may be worth, to be ascertained by the appraisement, under oath, of two disinterested persons, to be by the court appointed for that purpose.

May sue therefor.

SECT. 371. Every person to whom any such debt, claim, contract, mortgage, bond, note, or security may be assigned, shall accept the same without recourse to any person whomsoever, and may sue for and recover on the same at his own costs and charges, in the name of such executor or administrator making such delivery, or otherwise, in the same manner as such executor or administrator might have done.

Advancements

SECT. 372. If any child or other lineal descendant of such deceased person shall have been advanced by the deceased, by settlement or portion of real or personal estate, the value thereof shall be reckoned with that part of the surplus of the personal estate which shall remain to be distributed among the children; and if such advancement be equal or superior to the amount which would be distributed to such child as his share of such surplus and advancement, then such child or descendant, or those representing either of them, shall be excluded from any share in the distribution of such surplus. But if such advancement be not equal to such amount, such child or descendant, or those taking as their representatives, shall be entitled to receive so much only as shall be sufficient to make all the shares of all those entitled to be equal, as near as can be estimated.

Last section qualified and restricted.

SECT. 373. The maintaining, or educating, or giving of money to a child without a view to a portion or settlement in life, shall not be deemed an advancement within the meaning of the last preceding section, nor shall the provisions of said section apply in any case where there shall be any real estate of the intestate to descend to his heirs; but such cases shall be governed by the provisions respecting advancements, contained in the fifth article of the twenty-eighth chapter of these Revised Statutes.

Security may be required of heirs, etc.

SECT. 374. In making the order for such distribution, the court may require of the distributees, respectively, previous to the reception of their respective shares in such distribution, to file in the office of the clerk of such court, a bond with sufficient surety, payable to the state of Indiana, conditioned for the refunding of their rateable proportions of the estate distributed to them, to any heir, legatee, or creditor who may afterwards appear; and such bond shall be approved by the court and remain on file for the benefit of any such unknown heir, legatee, or creditor; but no person shall be permitted to maintain a suit on such bond as creditor, heir, or legatee of such estate, unless at the time of the death of the testator or intestate, such person shall have been a non-resident of this state, a minor, or insane, and shall have so continued until the time of such dis-

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tribution, or shall have been such non-resident, minor, or insane person at the time of such distribution, and for five years previous thereto.

Estates of married women.

SECT. 375. The preceding provisions respecting the distribution of estates, shall not apply to the personal estates of deceased married women; but their husbands may demand, recover, and enjoy the same as if the provisions of this article were not in force.

ARTICLE XV.

Of the rights and liabilties of executors and administrators.

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392. Writ of error by administrator de bonis non.
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425. May contribute after judgment.

ARTICLE 15.

Powers and rights of executors and administrators.

SECT. 376. From the granting of his letters, every executor or administrator shall be invested with all the powers and rights of the deceased, whom he may represent, so far as respects the personal estate of the deceased, wherever it may be found, subject to the restrictions and limitations of law, on account of his said trust, and the duties arising therefrom.

May sue and be sued in courts of record, and not of record.

SECT. 377. Actions and suits at law and in chancery on contract, may be maintained by and against executors and administrators as such, in the same courts of record and not of record, and in all cases, in which the same might have been maintained by or against their respective testators or intestates.

Administrators.

SECT. 378. Administrators shall have actions to demand and recover the debts and demands due to their intestate, and the personal property and effects of their intestate, and shall answer and be accountable to others to whom the intestate was holden or bound, in the same manner as executors.

Actions of trespass, &c.

SECT. 379. Executors and administrators shall have actions of trespass against any person who shall have wasted, destroyed, taken, or carried away, or converted to his own use, the goods of the testator or intestate, in the lifetime of such testator or intestate: they may also maintain actions for trespass, committed on the real estate of the testator or intestate in his lifetime.

For wrongs to the property of the deceased before his death.

SECT. 380. For wrongs done to the property, rights, or interests of the deceased, for which an action might have been maintained against the wrong doer by the deceased in his lifetime, his executors or administrators may maintain an action, in the same manner, and with like force and effect, in all respects, as they can actions founded upon contracts of the deceased; but this section shall not extend to actions of slander, for libel, assault and battery, false imprisonment, nor to actions on the case, for injuries to the person of the deceased.

Trespass against executors, &c.

SECT. 381. Any person, or his personal representatives, shall have an action of trespass against the executor or administrator of any deceased person, who in his lifetime shall have wasted, destroyed, taken, or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of any such person.

Liability of the executors and administrators of an executor or administrator.

SECT. 382. The executors and administrators of every person, who, as executor, either of right or in his own wrong, or as administrator, shall have wasted or converted to his own use, any goods, chattels, or estate of any deceased person, shall be chargeable in the same manner as their testator or intestate would have been if living.

Joint actions against several executors, &c.,

SECT. 383. In actions against several executors or administrators, they shall all be considered as one person, representing their testator or intestate, and judgment may be taken against

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such of them as may be served with process, upon the suggestion of the sheriff's return of "not found" being entered on the record, as in other cases.

—their representative character. When held to bail.

SECT. 384. No executor or administrator shall be held to bail in any action against him in his representative character, unless such action be brought to charge him out of his own estate; in which case he may be held to bail, in like manner as he might when sued in his individual character.

Suits pending at death, &c.

SECT. 385. If at the time any executor or administrator shall die, resign, or be removed by superseding his letters, any action, suit, or proceeding shall be pending, instituted by him as sole executor or administrator, or jointly with others, or in which his name is used as such executor or administrator, such action, suit, or proceeding shall not abate, or be discontinued thereby, but the same may be continued by the surviving or remaining executor or administrator, if there be such; and if not, then by the successor of such executor or administrator who may have died, resigned, or been superseded, such death, resignation, or removal being suggested on the record, and also the name of the successor in cases in which such successor shall have been appointed.

When removed, &c. cannot release action, &c.

SECT. 386. Any such executor or administrator who shall have resigned, or been removed by revoking or superseding his letters, shall have no power to release, dismiss, or discontinue any suit, action, or proceeding mentioned in the last preceding section, or to do any act or thing affecting the same, or the right or cause of action therein, nor in anywise to control, receive, or discharge any judgment or decree which may be recovered in any such suit or proceeding.

Suit by special administrator not to abate.

SECT. 387. When any special administrator shall have been appointed, as provided in this chapter, and he shall have been superseded in his appointment by an executor or administrator, any suit instituted by him as such special administrator may be continued by such executor or administrator, in like manner, and subject to the provisions and restrictions of the two last preceding sections.

Executor, &c. defendant, if removed, &c., suit to progress, &c.

SECT. 388. If an executor or administrator be defendant in a suit pending at the time of revocation or superseding of his powers as such, the plaintiff in such suit may proceed therein against such executor or administrator, if the object of such suit is to charge him personally; but no judgment recovered therein, after such revocation or superseding, shall be binding, or be of any force as against the estate of the testator or intestate, or any person succeeding to the administration of the same estate, except as provided in the next following section.

Court may substitute successor.

SECT. 389. If the plaintiff shall not elect so to proceed, as against such executor or administrator, the court in which such suit may be pending, on the application of the plaintiff, and after reasonable notice to the person succeeding to the administration of the same estate, may by rule of court substitute the person so succeeding, as defendant in such suit; and the same

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shall thereafter proceed to final judgment or decree, in like manner as if it had been originally commenced against the person so substituted.

So in case of death of executor, &c.

SECT. 390. In case of the death of an executor or administrator, during the pendency of a suit against him, the court may, in like manner as provided in the last preceding section, substitute the person succeeding to the administration of the same estate, as defendant in such suit, with like effect.

Suit not to abate by death of joint executor, &c. who is defendant.

SECT. 391. If one of two or more co-executors or administrators, against whom a suit shall be pending, shall die during the pendency of the same, such suit shall not abate thereby, but may be continued against the survivor or survivors upon suggesting such death on the record.

Writ of error by administrator de bonis non.

SECT. 392. When administration of the estate of a deceased person, which shall have been left unadministered by any previous executor or administrator of the same estate, shall be granted to any person, such person may bring a writ of error upon any judgment or decree, obtained against such previous executor or administrator of the same estate, or against the original testator or intestate, and may defend any writ of error brought on any judgment obtained in favor of such previous executor or administrator, or such testator or intestate.

Execution by administrator de bonis non.

SECT. 393. Any subsequent administrator, or administrator with the will annexed, shall have execution upon any judgment that may have been recovered by any person who preceded him in the administration of the same estate, without reviving the same by scire facias, and without any other proceeding to give notice to the defendant in such judgment.

Executor of an executor.

SECT. 394. An executor of an executor shall have no authority to commence or maintain any action or proceeding relating to the estate, effects, or rights of the testator of the first executor, or to take any charge or control thereof, as executor of such first executor.

What shall be deemed waste.

SECT. 395. Any mal-administration by the executor or administrator, of the estate or assets entrusted to his administration, whereby the same shall have been wasted, lost, or rendered less valuable, or diverted, or withheld, contrary to law, from the purposes to which the same ought to be applied, to the injury of any creditor, heir, legatee, or other person interested in the estate, or any negligence, failure, unfaithfulness, or fraudulent conduct, in the discharge of the duties of his said trust, or any abuse whatsoever of such trust, shall be denominated waste, and may be alleged as such, in any suit against such executor or administrator, or against him and his sureties on his bond; and for any such waste, he and his sureties shall be liable to answer out of his and their own estates, to any person injured thereby.*

*When there are two or more executors, each is liable only for the assets which came into his hands. *Call et al.* v. *Ewing*, 1 Blackf. 301.

An executor may be passive, by not obstructing his co-executor from obtaining the assets, without making himself responsible even to the creditors of the testator. *Ray et ux.* v. *Doughty et al.*, 4 Blackf. 115.

An administratrix took into her possession a part of the assets with the knowledge of her co-administrator, and converted them to her own use: *Held*, that though the

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Unfaithful administration.

SECT. 396. If any executor or administrator shall unreasonably delay to raise money by collecting the debts and effects of the deceased, or by selling the real estate if necessary, if he can procure an order of the court therefor; or if he shall neglect to pay what he has in his hands, and if, in consequence of such delay or neglect, the estate of the deceased shall be taken in exection or sold by any of his creditors, it shall be deemed unfaithful administration in such executor or administrator, and he shall be liable, together with the sureties on his bond, for all damages occasioned thereby, to the person or persons interested in such estate who shall be injured.

Who may sue.

SECT. 397. An action may be instituted by any creditor, heir, legatee, or other person interested in such estate, for his own benefit whenever there shall have been any breach of the condition of such bond, affecting or injuring such creditor, heir, legatee, or other person. *

How suit on bond shall be brought.

SECT. 398. Whenever any suit is brought on the bond of any executor or administrator, the name of the person at whose instance or for whose use such suit is brought, shall be endorsed on the writ by such person, or by his attorney; and such person shall be liable for the costs of such suit, if costs shall be awarded for the defendants, and execution shall issue therefor against him in like manner as if he had been named as the plaintiff.

On failure to return inventory, etc., court to ascertain, etc., and parties may sue.

SECT. 399. Whenever any executor or administrator has failed, for an unreasonable time, to convert the personal estate, or, when necessary, the real estate, into money for the payment of debts, legacies, or for distribution, or has failed to return an inventory, or render his account when required by the court, such court may ascertain the value of the estate of the deceased which should have been converted into money, or the value of the estate which should have been inventoried, or the amount of assets with which such executor or administrator is justly chargeable, from the best means of information within the power and control of the court, having first caused such executor or administrator to be served with reasonable notice thereof; and upon ascertaining such value or amount, and if necessary the portions or shares thereof to which such persons, interested in the estate, may be entitled; such executor or administrator may be sued on his bond by any person entitled to sue for and recover any such claim, legacy, or distributive share.

administratrix was a minor, her co-administrator was not liable for the devastavit. *Kay et ux.* v. *Doughty et al.*, 4 Blackf. 115.

*A creditor cannot sue on an administrator's bond until after he has obtained a judgment against the estate of the intestate. *Eaton* v. *Benefield et al.*, 2 Blackf. 52.

A legatee, distributee, or creditor, until his claim has been exhibited and established according to law, and the payment thereof has been refused by the executor or administrator is not a party injured within the meaning of the statute, and can have no suit for his benefit on the executor's or adminitrator's bond. *Eaton* v. *Benefield et al.*, 2 Blackf. 52.

The declaration in a bond of an executor or administrator, must show the relator to be a creditor, legatee, or distributee. Ibid.

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When creditor may sue on failure to pay debts.

SECT. 400. After a creditor is entitled by law to the payment of his debt from the executor or administrator, out of moneys properly applicable thereto, which shall have come into the hands of such executor or administrator, and the amount of his claim has either been admitted to be just, or allowed by such executor or administrator, or has been ascertained by judgment or award, or by an order of the probate court for the payment thereof on distribution, the bond given by such executor or administrator may be put in suit by such creditor, if the executor or administrator, upon demand made, shall neglect or refuse to pay such claim.

Suit by legatee, when.

SECT. 401. Like suit may also, in like cases, be brought by a legatee after he shall be entitled to the payment of his legacy; and by the widow or other distributee, to recover his or her share of the personal estate or estate to be distributed, after an order of the court ascertaining the amount due to him or her, if the executor or administrator shall neglect or refuse to pay the same when demanded.

Execution of judgment on bond.

SECT. 402. Execution in any such case, if judgment is for the plaintiff, shall be awarded and issued in the name of the plaintiff, but expressed to be for the use of such person, for the amount due to him upon the judgment that shall have been recovered.

Judgment and execution against removed executor, &c.

SECT. 403. When suit may be brought against any executor or administrator on his bond, who shall have been removed or superseded, or who shall have ceased to act, for any waste committed, or for failing to pay over or deliver to his successor, or to the remaining executor or administrator, as the case may be, any moneys, goods, chattels, effects, things in action, or assets of the deceased, in his hands to be administered; the writ shall be endorsed, and judgment and execution thereon shall be in like form as provided in the three hundred and ninety-eighth and four hundred and second sections of this chapter.

Avails of execution, to whom paid.

SECT. 404. All moneys received on an execution issued as aforesaid, for the benefit of any widow, heir, next of kin, legatee, or creditor, shall be paid over to such person; and all moneys received on an execution for the benefit of the rightful executor or administrator, against an executor or administrator who has been removed, or superseded, or whose authority has ceased, shall be paid over to such rightful executor or administrator, and shall be assets to be administered according to law.

Scire facias for further breaches, and for other debts.

SECT. 405. If, after the awarding of execution, as heretofore provided in this article, the executor or administrator shall commit a new breach of the conditions of the bond, or if any creditor, heir, next of kin, legatee, or other person interested in the estate, shall have a claim for damages, or any right of action against such executor, on his said bond, a writ of scire facias on the original judgment may be sued out, in like manner as is provided for the commencement of the original suit on such bond; and a new execution, upon being awarded by the court, may be issued in like manner as might have been done in the original suit.

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Judgment, &c not to bind real estate of deceased, &c. Not liable to execution.

SECT. 406. The real estate which belonged to any deceased person, shall not be bound, or in any way affected by any judgment or decree against his executors or administrators, nor shall it be liable to be sold by virtue of any execution upon such judgment or decree.

Judgment to be levied of assets.

SECT. 407. If a judgment is obtained against any executor or administrator as such, and no waste, negligence, mal-administration, or other act, is alleged or shown to render him personally liable, out of his own estate, the court shall award execution to issue on such judgment, to be levied of the assets in his hands, or of assets when they may come into his hands to be administered, as the case may be.*

Judgment against assets.

SECT. 408. In any such suit, if the executor or administrator shall not have interposed and sustained any valid plea or defence to the contrary, execution shall be awarded against assets in his hands.

Return of no assets, scire facias, &c.

SECT. 409. If any such execution shall be returned by the proper officer, that there are no assets in the hands of such executor or administrator to be found, the plaintiff in execution may have a writ of scire facias, alleging therein such return, and that such executor or administrator has wasted the assets in his hands to be administered.

Judgment de bonis propriis.

SECT. 410. If waste be alleged and established in such proceeding, such executor or administrator shall be liable therefor, out of his own estate, and judgment shall be rendered and execution awarded and levied accordingly.

Suit on bond.

SECT. 411. Upon the return of the execution, as specified in the four hundred and ninth section, such execution plaintiff, instead of resorting to the writ of scire facias as aforesaid, may institute and maintain an action on the bond of such executor or administrator, against him and his sureties, and in such action may allege the return of such officer, and the waste as aforesaid; and if he recover judgment, such executor or admi-

* In an action against an administrator, if, in the pleas of non-assumpsit and plene administravit, the jury find for the plaintiff, they should also find the amount of assets in the defendant's hands unadministered. *King* v. *Anthony*, 2 Blackf. 131. *Johnson* v. *Hawkins*, 2 Blackf. 459.

Assumpsit against an administrator on promises of the intestate; pleas, non-assumpsit, the statute of limitations, and plene administravit Judgment against the defendant de bonis propriis. *Held*, that as neither of the pleas was false within the defendant's knowledge, the judgment de bonis propriis was erroneous, but that as this was only a clerical mistake, time would probably be given for its amendment below, were there no other error in the case. Ibid.

The administrator of a guardian was sued in chancery by the administrator of the ward, for money received by the guardian from the administrator of the ward's father, as part of the ward's distributive share of his father's estate. *Held*, that a decree for the complainant in such case should be against the goods of the intestate, and not de bonis propriis. *Reynard et al.*, v. *Simonson*, 4 Blackf. 77.

Assumpsit against an administrator on a promissory note executed by the intestate; pleas, non-assumpsit, and failure of consideration. *Held*, that the judgment against the defendant in such case should not be de bonis propriis, but to be levied out of the assets of the intestate in the defendant's hands to be administered, if he have so much, but if not, then the costs out of the defendant's own goods. *Priest* v. *Martin*, 4 Blackf. 311.

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nistrator and his sureties, shall be liable out of their own estates, and execution may issue accordingly. * ARTICLE 15.

Scire facias in case of judgm't against assets quando, &c.

SECT. 412. When any person shall have recovered judgment to be levied of assets of the deceased, when they shall have come into the hands of the executor or administrator to be administered, such person may have a writ of scire facias against such executor or administrator, alleging therein, that since the commencement of the suit in which such judgment was rendered, assets have come into his hands to be administered, and requiring him to appear and show cause, if any he have, why execution may not be awarded, to be levied of said assets; and if no sufficient cause is shown to the contrary, execution shall be awarded accordingly.

Waste, &c. in such case may be alleged.

SECT. 413. Such judgment plaintiff may have his writ of scire facias against such executor or administrator, alleging therein waste, or any mal-administration of the assets that may have thus come into his hands; and upon the same being duly established, such executor or administrator shall be liable therefor out of his own estate, and judgment may be rendered and execution awarded and levied accordingly; and such plaintiff may resort to the bond of such executor or administrator, on account of such waste or mal-administration.

Future assets.

SECT. 414. If the whole sum for which any judgment against an executor or administrator may have been obtained shall not be collected for want of sufficient assets, and at any time thereafter further assets shall come into the hands of such executor or administrator, another scire facias may be issued, and the like proceedings, order, judgment, and execution may be thereon had as in the first instance; and so from time to time, as assets shall come into the hands of such executor or administrator.

When suit may be in chancery.

SECT. 415. Instead of proceeding at law in any suit authorized by the preceding section of this chapter, any rightful executor or administrator, creditor, widow, heir, next of kin, legatee, or other person interested in the estate, may proceed by bill in chancery in the probate court issuing the letters testamentary or of administration, or in the circuit court of the same county, making the executor, administrator, and his sureties, or their legal representatives, parties defendants.

Heirs, &c. may be made defendants.

SECT. 416. If any of the heirs, devisees, legatees, widow, or heirs of the deceased, or other person, shall be liable to the action of the complainant on account of assets having come to their hands, such complainant may also make any such person or persons parties defendants to such bill.

Court may direct jury, &c.

SECT. 417. In any suit in chancery, instituted respecting any matters contained or provided for in this article, the court may determine, by the verdict of a jury, if any party require

* After a judgment against an administrator on a bond of the intestate, and a recovery against him in an action on that judgment, suggesting a devastavit, the plaintiff sued on the administration bond. *Held*, that neither the principal nor his surety could plead plene administravit. *Goodwin et al.*, v. *Wilson et al.*, 1 Blackf. 344.

If a devastavit be established against an administrator, his sureties cannot afterwards controvert the devastavit. *The Governor* v. *Shelby*, 2 Blackf. 26.

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it, any questions of fact which may arise in such suit, properly cognizable at law.

Execution on the decree.

SECT. 418. If the court shall decree in favor of the complainant, execution may be directed to issue on such decree in like manner as if a judgment at law had been obtained in the premises, and the court may adjust and settle the estate, in whole or in part, according to the practice and rules of proceedings in courts of chancery.

Decree enforced, &c.

SECT. 419. If upon the hearing of such suit in chancery, the court shall be satisfied that the complainant is entitled to a decree against any parties defendants, who are heirs, next of kin, devisees, legatees, or the widow of the deceased, or other person than the rightful executor or administrator, such court shall render and enforce such decree in the premises as shall be just and right.

After decree, further breaches shown by bill, &c.

SECT. 420. If after any decree in chancery, the executor or administrator shall commit a new breach of the condition of his bond, or if any person shall have a further claim for further damages, on account of any waste or unfaithful administration, a bill in the nature of a supplemental bill may be filed in like manner as provided for the commencement of the original suit; and the court may thereupon make the like orders and decrees, and in like manner as might have been done in the original suit.

In suit on bond admission of executor, &c, only prima facie evidence.

SECT. 421. When suit is brought upon the administration bond at law or in chancery, by a creditor whose claim has been admitted or allowed by the executor or administrator, such allowance or admission shall be prima facie evidence only, of the validity and justice of such claim; and the executor or administrator, or other defendants, may, in the suit on the administration bond, contest the same, and the court may determine by the verdict of a jury, if either party require it, the amount or justice of such claim; or when the proceeding is in chancery, the court may decide on the claim by a reference to a master in chancery, or otherwise, if neither party require a jury.

Jury.

Mispleadings, &c. not to affect executor, &c;

SECT. 422. In any proceeding by writ of scire facias, and in action at law or in chancery, against such executor or administrator and his sureties, in any suit on his bond, or in any other suit or proceeding against him or his sureties, no mispleading nor lack of pleading, of such executor or administrator, or his sureties, or any of them, shall render him or them liable beyond the amount of assets for which such executor or administrator ought to account; nor shall any judgment by default, nil dicit, non sum informatus, or confession, preclude such executor or administrator, or his sureties, from showing that the assets committed to such executor or administrator for administration have been fully and rightfully administered according to law.*

Nor judgment by default, &c.

* At common law, if an administrator, when sued for a debt of the intestate, omit to plead plene administravit, and judgment be given against him, assets are admitted; and he cannot afterwards plead that plea in an action on the judgment suggesting a devastavit. *Goodwin, et al..*, v. *Wilson*, 1 Blackf. 344. *Moore, adm'r.* v. *Martindale*, 2 Blackf. 353.

The statute of 1821 changes this rule of the common law, and admits the plea in

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ARTICLE 16.

SECT. 423. Whenever any executor or administrator shall commit any waste or mal-administration, to the injury of any person interested in such estate, such person may institute and maintain therefor any suit at law or in equity, for his own benefit, against such executor or administrator, or against him and his sureties.

Who may sue, &c. See cases cited in note to sec. 397.

SECT. 424. If such suit is beneficial in any respect to other persons interested in such estate, and they will not, upon request, contribute to the costs and expenses of prosecuting such suit, the person instituting the same and recovering therein, shall be entitled to have his claim, debt, or damages first settled and discharged out of the estate gained or recovered by such suit.

Others may contribute, &c.

SECT. 425. If, however, before the payment or distribution of the assets, gained or recovered as aforesaid, any other person otherwise entitled to share therein, will apply and establish his claim, right, or demand, and will contribute such proportion of the costs and expenses as the court shall adjudge just and proper, and permit the allowance of such compensation to such person by said court as shall be just and reasonable, he shall be entitled to share in such payment or distribution as if he had united in the institution and prosecution of such suit, or contributed his proportionate share of the costs and expenses thereof.

May contribute after judgment.

ARTICLE XVI.

Of the liabilities of heirs, devisees, legatees, and distributees for the debts of the testator or intestate, and proceedings against them therefor by creditors.

SECTION

426 Creditor may have an action against the heirs, &c.
427. Cases in which such action may be maintained.
428. Where part has been recovered.
429. When heirs, &c. not liable.
430. How far liable.
431. Executors and administrators of heirs, &c. liable.
432. Action shall be by bill in chancery.
433. A jury may be required—costs.
434. Real estate, when liable—preference of lien.
435. Real estate not liable until execution defendant's property is exhausted.

SECTION

436. How real estate not liable in certain cases.
437. Each heir, &c. liable for his just proportion, except, &c.
438. How far in such case provisions of the will shall be complied with.
439. Who may be made defendants.
440. When suit may be brought.
441. Infancy of defendants not to delay the suit.
442. Of infant defendants—heirs liable to each other, &c.

such a case; but does not extend the principle to a suit on the administration bond, brought subsequently to the recovery for a devastavit. Ib.

The statute authorizing, under the above circumstances, the plea of plene administravit, does not affect cases in which the judgment by default was suffered previously to the statute *Moore, administrator*, v. *Martindale*, 2 Blackf. 353, *Martindale* v. *Moore*, 3 Blackf. 275.

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Creditor may have an action against the heirs, &c.

SECT. 426. Nothing contained in this chapter shall prevent or bar any creditor of the estate of the deceased, who may have failed to collect any debt specified in this article, of the estate, or executors or administrators of the deceased, from recovering the same of the heirs, devisees, legatees, and distributees of the deceased, to whom any estate or assets shall have come, according to the provisions of the following sections.*

Cases in which such action may be maintained.

SECT. 427. The heirs, devisees, legatees, or distributees of any deceased person, subject to the provisions and restrictions hereinafter prescribed, shall be liable to his creditors for debts of such deceased arising by simple contract, specialty, or of record, of the following description:

1. When, after due proceedings before the proper probate court or at law, the creditor has been unable to collect such debt, or any part thereof, of the estate of the deceased, or of his executors or administrators, either upon proceedings settling the estate of the deceased as insolvent, or upon a judgment or decree, obtained against such executors or administrators.

2. Where a right of action had not accrued to such creditor, previous to the final settlement of such estate, in the probate court.

3. Where such creditor, at the final settlement of such estate, and for six months previous thereto, was insane, an infant, or out of the state.

If part recovered, &c.

SECT. 428. In case a part of such debt was recovered of the estate of the deceased, or of the executor or administrator, on his bond or otherwise, the heirs, legatees, devisees, or distributees of such deceased, shall only be liable for the residue unpaid or uncollected.

When heirs, &c. not liable.

SECT. 429. But they shall not be liable for any part of such debt, for which the creditor has a remedy against the executors or administrators of the deceased personally, or against them and their sureties on their bond.

How far liable.

SECT. 430. Such heirs, devisees, legatees, or distributees shall each be liable only for debts of the description specified in this article, and to an amount not exceeding the value, whether of real or personal estate, that he or she shall have received under the will, by descent from, or by the distribution of the estate of the deceased.

Executors, &c. of heirs, &c. liable.

SECT. 431, If any of the said heirs, legatees, devisees, or distributees shall die, without having paid his or her just proportion of such debt, his or her executors or administrators shall be liable therefor, as for the proper debt of such decedent, to the extent to which he would have been liable if living.

Action shall be by bill in chancery.

SECT. 432. The creditor shall recover his debt by bill in chancery, and not otherwise, prosecuted jointly against all who are so liable, and their personal representatives, or as many of them as can be reached with process.

*Courts of law and equity have concurrent jurisdiction as to suits against heirs, executors, or administrators, for the debts of the decedent. *Martin* v. *Densford*, 3 Blackf. 295.

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ARTICLE 16.

A jury may be required.

SECT. 433. The court shall determine by a jury, if either party require it, what sum, if any, is due to the complainant; and shall also determine according to the course of proceedings in chancery, how much each of the defendants is liable to pay towards the satisfaction of the debt, and render a decree accordingly: the costs in such suit shall be apportioned among such defendants in proportion to the amount of such debt, recovered of each of them.

Costs.

Lands, when liable.

SECT. 434. Unless it shall appear to the court that the lands, tenements, and hereditaments, which have descended, or were devised to any such defendant, and on account of which the creditor is entitled to recover against him, were aliened by him in good faith subsequently to the final settlement of the estate of the ancestor or devisor, by the executor or administrator, in the proper probate court, and before the commencement of such suit, the court may decree that the debt of the complainant shall be levied of such lands, tenements, and hereditaments; and every such final decree against the same shall have preference, as a lien thereon, to any judgment or decree obtained against such defendant personally for any debt or demand in his own right.

Preference of lien.

When lands shall not be liable.

SECT. 435. But no lands, tenements, or hereditaments thus descended or devised to such heir or devisee, and aliened by him in good faith after the final settlement of the estate of the ancestor or devisor, by the executor or admininistrator, in the proper probate court, and before the commencement of such suit, shall be liable to execution or in any manner affected by a decree against such defendant in the premises; but he shall be personally liable on such execution or decree for the amount proper to be recovered against him, as for his own debt, not to exceed the value of such real estate, unless he is liable on account of personal assets, in which case he shall be also liable to an amount not to exceed the value of such assets.

How far lands not liable in certain cases.

SECT. 436. When such real estate has been aliened by any such defendant, but is liable to be reached by such decree, the same shall not be taken and sold by virtue thereof until the other property of the defendant subject to execution has been exhausted; and in that case any deficiency shall be supplied by a resort to the property thus aliened.

Each liable for his just proportion, except, &c.

SECT. 437. No more shall be recovered against any such defendant than his just proportion of any such debt, whether he has become liable therefor on account of real estate, or any interest therein, or on account of personal assets, unless the others are beyond the reach of process, or unless after due diligence the amount cannot be recovered from the others who are liable with him; in which case he shall be liable therefor to the extent of the real and personal assets received by him.

How far provisions by will shall be complied with.

SECT. 438. If, by the will of the deceased, any part of his estate, or any one or more of the devisees or legatees shall be made exclusively liable for the debt, in exoneration of the residue of the estate or of the devisees or legatees, the provisions of the will shall be complied with in that respect; and the real

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estate and the persons so exempted by the will shall be liable only for so much of the debt, if any, as cannot be recovered from those first chargeable therewith.

Who may be made defendants.

SECT. 439. Heirs, next of kin, legatees, devisees, and distributees may be sued jointly in any such suit; and no such suit shall be barred or dismissed for want of including all the persons as defendants who might have been included; and in any stage of the proceedings the court may award to the complainant proper process to bring in other parties, if just and proper, and may allow such amendments as may be necessary to charge them as defendants, on such terms as the court shall think reasonable.

When suit may be brought.

SECT. 440. No such suit shall be instituted against such heirs, devisees, legatees, or distributees until after the executor or administrator has made final settlement in the probate court of the estate of the deceased; and every such suit shall be instituted within one year after the complainant's right of action has accrued, and not afterwards.

Infancy not delay suit.

SECT. 441. No such suit shall be delayed, nor shall the remedy of a complainant be suspended by reason of the infancy of any heir, legatee, devisee, or distributee; but guardians to defend their rights in such suit shall be appointed as in other cases.

Infant defendants.

SECT. 442. When a decree shall be rendered against defendants who are infants, no execution issued thereon shall be executed against them until the expiration of one year after the rendition of such decree; but such execution may be executed against other defendants in the same suit, who are of full age, as in other cases; and whenever any heir, devisee, legatee, or distributee shall have been compelled to pay more than his just proportion, he may have his action at law or in chancery, severally or jointly with others, to recover of the other heirs, devisees, legatees, or distributees liable therefor, the amount which he may have thus been compelled to pay.

How heirs, &c. liable to each other.

ARTICLE XVII.

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444. Jurisdiction of court respecting such will.
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457. Shall account for rents, etc. thereof.
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465. Executor, etc., to receive the proceeds.
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Foreign wills. Powers, &c., of executors.

SECT. 443. When a will is executed in another state or country, and admitted to record in this state, in pursuance of the provisions of the forty-seventh, forty-eighth, forty-ninth, and fiftieth sections of this chapter, the executor, administrator with the will annexed, and any trustee appointed by such will, or by any court of this state, to perform any duty or to carry into effect any trust created by such will, shall have all the rights, powers, and authority, and shall be subject to the same liabilities, actions, and provisions of law respecting their respective duties and trusts as executors, administrators with the will annexed, and trustees under wills duly executed and admitted to probate in this state.

Jurisdiction of court respecting such will.

SECT. 444. The courts of this state shall, in all such cases, have the same jurisdiction and powers over the appointment filling vacancies, requiring sureties, and enforcing, directing, and restraining the performance and execution of the duties and trusts of such executors, administrators with the will annexed, and trustees as are given to such courts respecting the same matters arising under wills duly executed and admitted to probate in this state.*

Definitions of words.

SECT. 445. Every word contained in this chapter importing the masculine gender, may extend and be applied to females as well as males; and every word importing the singular number only may extend and be applied to several persons or things as well as to one person or thing; and every word importing the plural number only, may extend and be applied to one person or thing as well as to several persons or things; and the words "land," "lands," and "real estate" shall include lands, tenements, and hereditaments which descend to heirs, unless, from the manner in which any such word or expression is used, it shall clearly appear that such other meaning or application was not intended.

* An executor derives his power over the real estate of the testator from the will, and acts as the trustee of the testator to fulfil a personal trust. The authority of an administrator with the will annexed, emanates from, and depends upon legislative enactments. A power to executors to sell lands situate in Ohio, given by a will made in Virginia, could not be executed by an administrator with the will annexed, appointed in Virginia under their laws, in the absence of any statute of the state of Ohio authorizing the execution of such power by such an administrator. *Willis* v. *Cooper et al.*, 2 Ohio Rep. 124; S. C. 3 O. R. 488; *Henry et al.* v. *Doctor et al.*, 9 O. R. 49. See also *Naylor* v. *Moody et al.*, 2 Blackf. 247, and S. C. 3 Blackf. 92.

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Executor, &c., may prosecute appeal, &c., without giving bond.

SECT. 446. Every executor or administrator who may have given bond in this state, with sureties according to law, shall be authorized in all cases of an appeal by him made from one court to another, or on a writ of error, to prosecute the same without filing any bond for such appeal or in such proceedings in error.

Duty of clerk to report delinquency.

SECT. 447. Whenever any executor or administrator shall fail to return or file any inventory, account, report, proceedings, or other matter within the time prescribed by law, or by any order of the probate court, it shall be the duty of the clerk to report such delinquency to the court at the earliest opportunity thereafter.

Liability of sureties on first bond, when new one is given.

SECT. 448. When any new bond shall be required of an executor or administrator, the sureties in the prior bond shall, nevertheless, be liable for all breaches of the conditions of such prior bond, committed or suffered before the new bond shall be approved by the probate court; and for every failure of such executor or administrator to perform any duty, service, or obligation in fully accounting for, and paying over to the proper person, all the assets which may have come into his hands as executor or administrator.

Executor of his own wrong.

SECT. 449. Every person who shall unlawfully intermeddle with, embezzle, or take into his possession, any of the property, money, or assets of any testator or intestate shall be chargeable as an executor of his own wrong, and shall be liable to an action at law, by any creditor of the deceased or other person interested in such estate, to the extent of the damage sustained thereby; and such executor of his own wrong shall also be liable to account for the full value and amount of such property, money, and assets, to any person entitled thereto; and the court having jurisdiction shall have power to compel such executor to answer under oath concerning the same, and to make such order and decree in the premises as may be just and necessary.*

Cannot retain for his own debt.

SECT. 450. Such executor of his own wrong shall not be allowed to retain or deduct from such property, money, or assets the amount of any debt or any part thereof, due to him from the deceased.

Who may sell land devised or directed by will to be sold.

SECT. 451. When any real estate or any interest therein is given or devised by any will legally executed to the executors therein named, or any of them, to be sold by them or any of them, or where such estate is ordered by any will to be sold by the executors, and any executor or executors shall neglect or refuse to take upon him or them the execution of such will, then

* If a widow continue in the possession of her deceased husband's goods and use them as her own, she is liable as an executrix de son tort. *Hawkins* v. *Johnson*, 4 Blackf. 21.

A person set out from this state for *New Orleans*, on a trading voyage, leaving his wife and five small children in a destitute situation. His debts exceeded the value of his property, and he did not live to return home. Within a year after his departure, and before his wife had any certain knowledge of his death, she had used the property left by him, in the support of the family and in the payment of his debts. *Held*, that, under these circumstances, the widow was not liable, as an executrix de son tort, to the creditors of her husband. *Brown* v. *Berright et ux.*, 3 Blackf. 39.

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all sales made by the executor or executors who shall take upon them the execution of such will, shall be equally valid as if the other executor or executors had joined in such sale.

Proceedings against person concealing estate, &c.

SECT. 452. Upon complaint made to the probate court by any executor or administrator, under oath, against any one suspected and believed to have concealed, converted, or conveyed away any of the money, goods, or effects of the deceased, such court may cite such person to appear before the court, and to be examined on oath upon the matter of such complaint; and if the person thus cited, shall refuse to appear and submit to such examination, or to answer such interrogatories as shall be lawfully propounded to him or her, the court may commit such person, upon order or attachment, to the jail of the county until the interrogatories propounded by the court shall be answered on oath; and all such interrogatories and the answers thereto, shall be in writing and signed by the party examined, and filed in the said probate court.

Copies of notices, &c., to be filed.

SECT. 453. An executor or administrator, whose duty it is to give any of the notices required by the provisions of this chapter, shall file a copy of every such notice in the office of the clerk of the probate court, with an affidavit thereon, made by a competent witness before some officer duly authorized to administer oaths, stating the times and places when and where such notices were published or set up.

Effect of, in evidence.

SECT. 454. Such copy of any such notice, verified as aforesaid and duly certified by the clerk of said court, shall be received in evidence in any court of this state, and be deemed sufficient proof of the matters and things therein contained.

Last two sections explained.

SECT. 455. Nothing contained in the two preceding sections shall preclude such executor or administrator, or any other person, from proving, in any suit or proceeding, that the provisions of this chapter, respecting any such notice, have been complied with, although no such copy or affidavit may have been filed as therein required.

When executor or administrator may take real estate, &c.

SECT. 456. If there be no heir or devisee of a testator or intestate present to take possession of the real estate left by any such testator or intestate, the executor or administrator of his personal estate, may, as trustee for the proper heirs or devisees, take possession of such real estate, and demand and receive the rents and profits arising threfrom, and sue for and recover the same, and do all other acts and things relating to such real estate, which may be for the benefit of the person or persons entitled thereto, and consistent with their rights and interests.

Shall account for rents thereof, &c.

SECT. 457. Such executor or administrator shall account to such heirs or devisees for any rents, profits, or use of said premises which he shall have received, deducting therefrom a reasonable compensation for his care and expenses.

May apply proceeds to payment of debts.

SECT. 458. Such executor or administrator, under the order and direction of the probate court, may apply any proceeds derived by him as aforesaid from such real estate, to the pay-

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ment of debts and claims against the estate of the testator or intestate, in case the personal assets are insufficient.

Executors and administrators to loan money,

SECT. 459. It is hereby made the duty of executors and administrators to seek occasions to loan the money in their hands as such executors or administrators; and on the failure so to do, shall be held accountable for legal interest thereon out of their own estates.

Under the direction of the court.

SECT. 460. Such executors or administrators shall make all such loans under the direction of the probate court; and if such money be thus loaned, and the security required by the court be taken in good faith and without fraud, such executors or administrators shall not be held accountable for any loss thereof, unless they should fail to use due diligence to enforce the collection thereof.

When to account for profit, interest, &c.

SECT. 461. If any executor or administrator shall use the money of any such estate for his own benefit, he shall be held accountable for any profit made thereon, or for legal interest, making such pauses in the computation thereof as the court shall deem right, and charging interest upon interest.

Unknown parties.

SECT. 462. If, in any proceedings by or against executors or administrators, except actions at law, there are persons whose names are unknown, or whose place of residence is unknown, or who reside out of the state, the person or persons instituting such proceedings may state the fact in his petition; and upon the same being verified by the affidavit of any disinterested witness, notice of the pendency and object of such proceedings shall be given, for four weeks successively, previous to the term of the court at which the matter of such proceeding is heard, in some newspaper printed in the county in which the estate of the deceased is settled; or if no paper is printed therein, then in a newspaper printed nearest thereto in this state; except that the provisions of this section shall not apply in cases where the mode of notice or publication is by law specially directed.

Publication of notice.

How foreign executor, &c. may institute suit.

SECT. 463. A non-resident executor or administrator, duly appointed in any other state or country, may commence and prosecute any suit at law or in equity in any court of this state, in his capacity of executor or administrator, in like manner, and under like restrictions as a non-resident; and a copy of his letters, duly authenticated, in like manner as provided in the forty-seventh section of this chapter, being produced and filed in the court in which such suit is brought, shall be sufficient evidence of his due appointment.

Mortgage unforeclosed to be assets.

SECT. 464. When any mortgagee of real estate, or any assignee of such mortgagee, shall die without having foreclosed the right of redemption, or received payment of the amount secured by such mortgage, the mortgaged premises, and the debt secured thereby, shall be considered as personal assets in the hands of his executor or administrator, and shall be administered and accounted for as such; and such executor or administrator as such, shall have the same right to possession of the mortgaged premises, and to bring any suit or action respecting

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the same, or for the recovery of the debt secured thereby, and to execute, discharge, or perform any duty, act, or power contained in such mortgage, or in the provisions of any law, as such mortgagee or assignee could if he were alive.

Executor, &c. may receive money, &c.

SECT. 465. When in any such case the mortgage is redeemed, or the debt secured thereby is paid, the money shall be received by the executor or administrator, and he shall thereupon release and discharge the mortgage.

Hold as trustee, &c.

SECT. 466. If the mortgaged premises shall have been taken possession of under the mortgage, by the executor or administrator, or by the deceased, the executor or administrator shall hold the same in trust for the creditors, heirs, or other persons entitled to the money upon the sale or redemption of the premises.

How joint rights and obligations affected by death of an obligor, &c.

SECT. 467. When two or more persons shall be indebted or bound in any joint note, contract, or covenant, for the payment of any money, or the performance or forbearance of any act or thing, or upon any judgment founded upon any such note, contract, or covenant, and either of them shall die, his estate, executors, or administrators, shall be liable therefor, as if such note, contract, or covenant had been joint and several, or as if such judgment had been obtained upon a joint and several note, contract, or covenant. *

Last section qualified.

SECT. 468. The preceding section shall not be so construed as to affect the rights of a surety, when certified as such in a judgment rendered jointly against him and his principal.

Guardian ad litem.

SECT. 469. In all suits and proceedings instituted under any of the provisions of this chapter, in which infants may be plaintiffs, complainants, or defendants, such infants shall appear by their guardian at law, or guardian ad litem, appointed by the court; and any such suits or proceedings, if conducted in good faith and without fraud, shall not be liable to be opened by such infants, upon arriving at full age.

When infant heirs, &c. may open decree, &c.

SECT. 470. Any such infant, after arriving at full age, may, within one year thereafter, upon the proper proceedings being instituted by him, have any judgment, order, or decree opened, or annulled, or set aside, according to right and justice, if he can show that the same was obtained through fraud or unfairness.

When executor &c. shall pay taxes and interest on lands.

SECT. 471. It shall be the duty of executors and administrators, when any of the heirs of the testator or intestate are minors, to pay out of any assets in the hands of any such executor or administrator, any taxes assessed against the real or personal estate of the deceased, after his death, and also the interest which may accrue on any canal, school, or seminary lands, as well after as before such death; and every such payment shall be credited to such executor or administrator, as the payment of other claims against the estate of the deceased.

* On a judgment against *A*, *B*, and *C*, a scire facias issued to have execution against the goods of *A*, deceased, in the hands of his administrator. *Held*, that the scire facias not averring the death of *B* and *C*, and the survivorship of *A* was bad on demurrer.

Quere, whether the administrator of *A* could be subjected jointly with *B* and *C*, if living, to the judgment; or whether, as respects the personal charge, *B* and *C* were alone liable at law, as the survivors of *A*. *Graham et al.*, v. *Smith, adm.*, 1 Blackf. 414.

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' The following cases, relating to the rights and duties of executors and administrators, and not particularly applicable to any of the preceding sections, are here appended.

1. If the plaintiff sue as administrator where he might have sued in his own name, he need not make profert of the letters of administration. *Savage et al.*, v. *Meriam et al.*, 1 Blackf. 176.

If an administrator change the nature of the debt originally due to the intestate, by a contract made with himself, he must sue for the new debt in his own name, and not in his representative character. *Helm* v. *Van Vleet*, 1 Blackf. 342.

If the plaintiff declare on a promise made to himself, and take judgment in his own name, his styling himself administrator in the declaration may be considered as only a descriptio personæ. Ibid. See also, *Capp* v. *Gilman*, 2 Blackf. 45.

A note payable to *A*, administrator of *B*, is due to *A*, in his own right, and he may sue on it without naming himself administrator. *Barnes* v. *Modisett et al.*, 3 Blackf. 253.

If, in such case, the suit be in the name of *A*, administrator of *B*., the words "administrator of *B*," may be considered as surplusage. Ibid.

2. An administrator-plaintiff, necessarily suing in his representative character, as on a contract entered into with the intestate, pays no costs, though he fail in the suit. *Harrison* v. *Warner*, 1 Blackf. 385. *Pollard* v. *Buttery*, 3 Blackf. 239.

If, however, he might have sued in his own name, as on a contract made with himself, or for trover and conversion of the goods of the estate in his own time, he must pay the costs in case of failure. Ibid.

So, though he necessarily sue as administrator, he is liable for costs when he knowingly brings a wrong action, is guilty of wilful default, fails to prosecute his suit, or sues on a contract which he knows to be annulled. Ibid.

In a bill in chancery, filed by an administrator on a cause of action which accrued to the intestate in his lifetime, was dismissed upon the merits. *Held*, that the defendant was not entitled to a decree for costs. *Cooper* v. *Thatcher et al.*, 3 Blackf. 59.

3. If an executor or administrator sue on a cause of action, arising in the lifetime of the testator or intestate, and the defendant plead the general issue, or any other plea in bar, the plaintiff's character of executor or administrator is admitted. *Pollard* v. *Buttery*, 3 Blackf. 239.

The general issue and a special plea in bar were filed in a justice's court, to a suit by an administratrix, and the cause was then transferred to the probate court. *Held*, that the defendants could not afterwards deny the character in which the plaintiff sued. *Scanland* v. *Ruble*, 4 Blackf. 481.

4. The objection to a declaration in debt against an administrator, on account of its being in the debet and detinet, instead of the detinet only, can be taken advantage of only by special demurrer. *Hamilton* v. *Noble*, 1 Blackf. 188.

5. A bill was drawn on an administrator, payable out of a particular fund. The administrator promised the holder that if he would retain the bill, it should be paid whenever a certain farm should be sold. *Held*, that as the consideration of this promise arose subsequently to the intestate's death, no action would lie against the administrator on the promise, so as to charge the estate of the intestate. *Mills et al.*, v. *Kuykendall*, 2 Blackf. 47.

6. The promise of an administrator to pay a debt of the intestate, need not be averred in the declaration to be in writing; the statute of frauds applying to the proof and not to the declaration. Ibid.

7. *A* obtained judgment before a justice of the peace against *B*, and the defendant appealed to the circuit court; whilst the appeal was pending, the suit abated by the death of *A*. *Held*, that the administrator of the deceased might revive the suit. *Adams* v. *Evans*, 4 Blackf. 247.

8. *B* had filed before the justice, in the above named suit, an account against *A*, as a set-off, which amounted to more than *A's* demand; and on the trial in the circuit court, (the suit having been revived, &c.) the jury gave a verdict in *B's* favor for a certain sum, without finding the amount of assets in the administrator's hands. *Held*, that the omission to find the amount of assets was not, in this case, any objection to the verdict. Ibid.

9. While the letters of an infant administratrix remain unsuspended and unrevoked, the payments made to her by the debtors of the intestate, and the delivery of goods of the estate to her, by her co-administrators, are to be considered in the same light as if her authority were undisputed. *Ray et ux.*, v. *Doughty et al*, 4 Blackf. 115.

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CHAPTER 31.

OF THE TITLE TO PERSONAL PROPERTY IN CERTAIN CASES: OF PROMISSORY NOTES AND BILLS OF EXCHANGE; AND OF THE INTEREST OF MONEY.

ARTICLE 1. Of the accumulation of personal property and of expectant estates therein, and of personal property held by joint tenants.
ARTICLE 2. Of promissory notes and bills of exchange.
ARTICLE 3. Of the interest of money.

ARTICLE I.

Of the accumulation of personal property and of expectant estates therein, and of personal property held by joint tenants.

SECTION
1. How long the ownership of personal property shall be suspended.
2. Of the accumulation of interest, profits, &c.
3. Void accumulation.
4. Interest, &c. may be applied to support of minor.
5. Joint tenancies.

SECTION 1. The absolute ownership of personal property shall not be suspended by any limitation or condition whatever, for a longer period than during the continuance and until the termination of any lives in being, at the date of the instrument containing such limitation or condition; or if such instrument be a will, for not more than the duration of any lives in being at the death of the testator. How long the ownership of personal property shall be suspended.

SECT. 2. An accumulation of the interest of money, the income of stocks, or other profits arising from personal property, may be directed by any instrument sufficient in law to pass such personal property, as follows: Of the accumulation of interest, &c.

1. If the accumulation be directed to commence from the date of the instrument, or the death of the person executing the same, such accumulation must be directed to be made for the benefit of one or more minors then in being, or in being at such death, and to terminate at the expiration of their minority.

2. If the accumulation be directed to commence at any period subsequent to the death of the person executing such instrument, it must be directed to commence within the time allowed in the first section of this article, for the suspension of the absolute ownership of personal property, and at some time during the minority of the persons for whose benefit it is intended, and must terminate at the expiration of such minority.

SECT. 3. All directions for the accumulation of the interest, income, or profit of personal property, other than such as are herein allowed, shall be void; but a direction for an accumulation, in either of the cases specified in the last preceding section, for a longer term than the minority of the persons intended to When void.

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be benefitted thereby, shall be void only as respects the time beyond such minority.

Interest, &c. applied to the support of minor.

SECT. 4. When any minor for whose benefit a valid accumulation of the interest, income, or profit of personal property shall have been directed, shall be destitute of other sufficient means of support, or of education, a court of chancery jurisdiction, upon the application of such minor or his guardian, may cause a reasonable sum to be taken from the moneys accumulated, or directed to be accumulated, and to be applied to the support or education of such minor.

Joint tenancy.

SECT. 5. If any personal property is held by two or more persons in joint tenancy, the parts of those who shall first die shall not accrue to the survivor or survivors, but shall be considered and pass in all respects as if such tenants had been tenants in common; unless it shall be clearly expressed that the same shall accrue to the survivor or survivors.

ARTICLE II.

Of promissory notes and bills of exchange, and the assignment of judgments and decrees.

SECTION

6. Promissory notes, &c. declared assignable.
7. Assignee may maintain suit in his own name.
8. Maker, &c. may set up defence.
9. May show payment, &c.
10. Remedy of assignee, &c. against endorsers.
11. Last two sections qualified.
12. Judgment or decree, how assignable.
13. Effect.
14. Notice, &c.
15. Execution.
16. Delivery bonds, trial of the right of property, &c.

SECTION

17. Preceding provisions shall not apply to notes payable in bank, &c.
18. Damages on bills of exchange.
19. How far to be in lieu of interest.
20. Damages to be ascertained without reference to rate of exchange, in certain cases.
21. Drawer, &c. not liable to damages in certain cases.
22. Who shall recover damages.
23. No damages on certain bills.
24. Provisions as to damages on bills of exchange, not applicable to promissory notes discounted in bank.

Promissory notes, &c. assignable.

SECT. 6. All promissory notes, bills, bonds, or other instruments in writing, made and signed by any person or corporation, whereby such person or corporation promises to pay any sum of money, or acknowledges any sum of money to be due to any other person or persons, or corporation, or for the delivery of any specific article, or to convey any property, or to perform any condition or conditions therein mentioned, shall be, and the same are hereby made, assignable and negotiable by endorsement thereon, so as absolutely to transfer and vest the property thereof in each and every endorsee successively.*

*The assignment of promissory notes, in this state, is not governed by the law of merchants. *Bullitt* v. *Scribner*, 1 Blackf. 14.

The statute authorizing the assignment of a note need not be referred to in the declaration. *Taylor* v. *Walpole*, 1 Blackf. 378.

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ARTICLE 2.

Assignee may maintain suit.

SECT. 7. Any asssignee to whom any such note, bill, bond, or other instrument is made payable by any such endorsement or assignment, may, in his own name, institute and maintain an action, and recover thereon, against the person or persons, or corporation, who shall have made or signed the same.*

Maker, etc. may set up defence. *Davis* v. *Clements*, 2 Blackf. 3.

SECT. 8. The maker, drawer, or obligor of any such note, bill, bond, or instrument, except as hereinafter provided, may set up and show any legal or equitable defence to such action, which he had thereto, as against the payee, drawee, or obligee, before notice of the assignment thereof by such payee, drawee, or obligee, and which he might have set up and shown, had an action been brought on such note, bill, bond, or instrument, in the name and for the use of the original payee, drawee, or obligee. †

May show payment, &c.

SECT. 9. Such maker, drawer, or obligor may set up and show any just matter of payment, set-off, or other defence in his favor, as against the plaintiff in such action; and also, all just matters of payment, set-off, or other defence which he had, as against any assignor before notice of the assignment thereof by such assignor, and which he might have set up and shown,

* The declaration in debt by an assignee against the maker of a promissory note may commence—*A B* complains of *C D* instead of *A B*, assignee of *E F* complains, &c. *Taylor* v. *Walpole*, 1 Blackf. 378.

In debt or assumpsit by the assignee against the maker of a promissory note, a special plea denying the assignment is bad on special demurrer.

Nil debit or non assumpsit puts the whole case in issue, and requires the assignee of a promissory note, in an action against the maker, to prove his title to the note and every other material allegation in his declaration.

But if such plea is not sworn to, the assignment is admitted. *Bates, et al*, v. *Hunt*, 1 Blackf. 67. *Scribner* v. *Bullett*, ib. 112.

In an action by a bona fide assignee of a promissory note against the assignor, it is no defence that the note was originally given by the maker to the defendant for an illegal consideration.

The assignment of a note is itself a contract, which, prima facie, imports a good consideration. *Johnson, et al.*, v. *Dickson, et al.*, ib. 256.

A promissory note is, by statute, the foundation of an action, like a bond or bill of exchange; and the consideration need not, in such case, be averred in the declaration. *Findley* v. *Cooley*, ib. 262.

† In a suit by the assignee of an obligation for the payment of money against the obligor, the defendant, under the plea payment with a set-off, proved payments to the obligee before the assignment to an amount exceeding the obligation. *Held*, that the defendant could not have a verdict for the overplus; such payments affecting the assignee no farther than to bar his recovery. *Johnson* v. *Collins, et al.*, 1 Blackf. 166.

If a debtor having a good defence against a bond, induce an innocent person to obtain an assignment of it, without disclosing his objection, he forfeits his defence. *Muchmore* v. *Bates*, 1 Blackf. 248.

A executed a bond to *B* for one thousand dollars. *B* assigned it to *C*, stating in the assignment that the bond was payable in certain bank paper. *Held*, that the assignee could maintain debt on the bond against the obligor, but that the recovery must be limited to the value of the paper mentioned in the assignment. *Fischli* v. *Cowan*, 1 Blackf. 350.

Suit by the assignee of the payee of a promissory note against the maker. Pleas the general issue, payment, and former recovery. *Held*, that the defendant might prove by the plaintiff's written acknowledgment that the note was assigned to the plaintiff only as a security for a debt of a less amount than that of the note; and might also prove that he, the defendant, had, with notice of the assignment, paid the note to the assignor. *Held*, also, that upon these facts being proved, the plaintiff might recover the amount of the debt intended to be secured by the assignment of the note, but no more. *Westbrook* v. *Robinson, et al.*, 5 Blackf. 105.

The declaration in a suit by the assignee against the maker of a promissory note, after stating the execution of the note, etc., averred that the payees, *John Greenfield and Son*, then and there endorsed the same to the plaintiff. *Held*, on general demurrer, that the averment was sufficient. *Cooper, assignee*, v. *Drouillard*, ib. 152.

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had an action been brought against him on such note, bill, bond, or instrument, by such assignor.

Assignee's remedy against endorsers, &c.

SECT. 10. Any assignee of any such note, bill, bond, or instrument, who shall have used due diligence to obtain the money, article, property, or condition, from such maker, drawer, or obligor, may have his action against him or them who endorsed the same, for the recovery of the money or damages due thereon. *

Last two sections qualified.

SECT. 11. Nothing contained in the last preceding two sections shall alter or affect the law as it now is, as relates to bills of exchange, foreign or inland.

Judgment, &c. assignable.

SECT. 12. Judgments and decrees of a court of record, for the recovery of a sum of money, and judgments obtained before a justice of the peace, shall be assignable under the hand of the plaintiff or complainant, and the assignees thereof successively, such assignment to be made on the docket entry of such judgment or decree, and to be attested by the clerk of the court, or such justice of the peace.

Effect.

SECT. 13. Every such assignment so made, shall absolutely transfer and vest all the right, interest, title, and property of such judgment or decree, in each and every assignee thereof successively, as fully and entirely as if such judgment or decree had been entered in favor of such assignee.

Notice.

SECT. 14. After notice of such assignment to the judgment debtor, no payment or satisfaction of such judgment or decree to the assignor shall be of any force or effect, as against the assignee; but all such payments or satisfaction before notice of the assignment shall be valid, and no such assignment shall defeat or affect any just, legal, or equitable defence or right which the judgment debtor may have had against any assignor previous to notice of any such assignment.

* If the maker of a note be notoriously insolvent, the assignee may sue the assignor without having previously sued the maker. *Youse* v. *M'Creary*, 2 Blackf. 243.

If the assignee of a note cannot collect the money from the maker, he may recover from the assignor the amount paid for the assignment, together with interest and the costs of the suit, against the maker. The amount of the note is prima facie evidence of the price received by the assignor, but he is at liberty to prove the real consideration. Ibid.

The assignee of a note obtained a judgment and ca. sa. in due time against the maker, who was committed to jail, and discharged under the insolvent law. *Held*, that this was prima facie evidence of due diligence under the statute, to bind the assignor, who before suit on the assignment, knew of the maker's insolvency. *Bullitt* v. *Scribner*, 1 Blackf. 14.

An assignee of a promissory note cannot sue a remote assignor, where the note assigned is not governed by the law of merchants. *M'Carty* v. *Rhea*, 1 Blackf. 55.

In an action on the assignment of a note or bond, by the assignee against the assignor, the consideration of the assignment need not be set out in the declaration, but the time when the suit against the maker was instituted, judgment obtained, and execution issued, or the circumstances of excuse for not suing him, must be stated. *Hannah* v. *Pegg*, 1 Blackf. 181.

To fix the liability of the assignor of a note or bond under our statute, the general rule, except in cases of notorious insolvency, or of something equivalent, is, that the assignee must bring a suit against the maker or obligor, and proceed in the ordinary course of law, for the collection of the debt; and that, as to the execution, the return of a fi. fa. "no property found," is prima facie sufficient. Ibid.

If the maker of a sealed note was solvent at the term when the assignee might have obtained judgment against him but for a defect in the declaration, and if that defect occasioned a continuance, whereby the plaintiff failed to obtain the money from the maker, the assignor is not liable. *Odam* v. *Beard*, 1 Blackf. 191.

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ARTICLE 2.

Execution.

SECT. 15. In such case, execution shall issue in the name of the original plaintiff or complainant, but shall be endorsed by the clerk or justice, to be for the use of the assignee entitled thereto by the force of such assignment.

Delivery bonds &c.

SECT. 16. All bonds for the delivery of property levied upon by virtue of such execution, shall be to the judgment plaintiff, for the use of such assignee; and all writs and proceedings to try the right of property, and all other suits and proceedings relating to any such judgment or decree, or against any officer on his bond, for any failure or neglect of duty relating thereto, may be against or on the relation, or for the use of such assignee, as the case may require.

Preceding provisions shall not apply to notes payable at bank, &c.

SECT. 17. All notes in writing, negotiable and payable at any chartered bank in this state, in which such bank has any beneficial interest, and drawn for the payment of a sum of money certain and payable to order, assigns, or bearer, shall be taken as due and payable as therein expressed, and shall have the same effect, and be negotiable in like manner as inland bills of exchange, according to the custom of merchants; and the payees and indorsees of every such note may maintain their action for such sum of money, against the endorsers and makers of the same, respectively, in like manner as in cases of such inland bills of exchange. *

Damages on bills of exchange.

SECT. 18. The rate of damages to be allowed and paid upon the usual protest for non-payment, or non-acceptance of bills of exechange, drawn or negotiated within this state, shall, in the cases specified in this section, be as follows:

1. If such bill shall have been drawn on any person or persons, at any place out of the United States, ten dollars upon the hundred, upon the principal sum specified in such bill.

2. If such bill shall have been drawn upon any person, at any place in the United States, or any of the territories thereof, and without the jurisdiction of this state, five dollars upon the hundred, upon the principal sum specified in such bill.

Shall be in lieu of interest, &c.

SECT. 19. Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to and at the time of giving notice of non-payment or non-acceptance; but the holder of such bill shall be entitled to demand and recover lawful interest, upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of such protest shall have been given.

Damages to be without reference to the rate of exchange in certain cases.

SECT. 20. If such bill be drawn on any person or persons, at any place within the United States, or any territory thereof, the amount due thereon, and the damages, shall be ascertained without any reference to the rate of exchange existing between this state and the place on which such bill shall have been drawn.

*The demand of payment on the drawee of a bill of exchange, in order to charge the drawer in case of non-payment, must be made on the third day of grace. *Pratt et al.*, v. *Eads*, 1 Blackf. 81.

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Drawer, &c. not liable to damages, if paid on notice, &c.

SECT. 21. Nothing contained in this article shall be so construed as to subject the drawer or endorser of any bill to any damages for non-acceptance, except the costs of protest, if such bill shall be paid by the drawer or endorser, upon notice of protest for such non-acceptance, and upon demand of the principal sum due on such bill.

Who shall recover damages.

SECT. 22. The damages allowed by this article on bills of exchange protested for non-payment, shall be recovered only by the holder of a bill, who shall have procured the same, or some interest therein, for a valuable consideration.

No damages, &c. on certain bills.

SECT. 23. No damages, nor charges for protest, shall be allowed on the protest of any bill for non-payment or non-acceptance, negotiated in this state and drawn on any person at any place without this state, if it shall appear that such bill was not to be presented at such place for acceptance or payment, if the drawer or any endorser thereof would provide means for its payment or discharge, at any place within this state.

Promissory notes, &c.

SECT. 24. The provisions of this article relating to damages upon bills of exchange, shall not apply to promissory notes discounted by any bank, and afterwards protested for non-payment.*

ARTICLE III.

Of the interest of money.

SECTION

25. Rate of interest.
26. No greater rate than six per cent. to be taken.
27. Interest on judgments and decrees.
28. Interest on accounts, &c.
29. Effect of usurious contract.
30. Illegal interest may be recovered back.
31. Person taking more than legal interest to answer under oath.
32. Exempt from fine, &c. if he answer.
33. In case of a bill in chancery, need not bring money into court.

SECTION

34. Who shall be compelled to testify as witnesses.
35. Witnesses exempted from punishment.
36. Punishment for taking illegal interest.
37. How interest shall be calculated in certain cases.
38. Provisions of this article not to apply to interest on school and other public funds.

Rate of interest.

SECT. 25. The rate of interest upon the loan or forbearance of any money, goods, or things in action, shall be at the rate of six dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time.

No greater rate than six per cent. to be taken.

SECT. 26. No person or corporation shall directly or indirectly take or receive in money, property, or things in action, or in any other way, any greater sum or greater value for the

* Bills of exchange by the law merchant, and promissory notes by statute, may be declared on as specialties; but this privilege may be waived, and, where there is a privity of contract, the holder may declare on the original consideration, and give the bill or note in evidence. *Hanna* v. *Pegg*, 1 Blackf. 181.

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loan or forbearance of any money, property, or things in action, than at the rate above provided.* ARTICLE 3.

SECT. 27. Interest on the judgment or decree of any court, or of any justice of the peace, for the payment of a specific sum of money, shall be allowed and computed at the rate specified in the first section of this article, and no more, from the date of signing such judgment or decree until the same be paid or satisfied. Interest on judgments and decrees.

SECT. 28. On all moneys, after they become due, on bond, bill, promissory note, or other instrument in writing; on money due on the settlement and liquidating of accounts, from the day the balance shall have been ascertained; on money received to the use of another, and retained without the owner's consent, express or implied, from the reception thereof; on money due and withheld by vexatious and unreasonable delay of payment, interest shall be allowed and computed after the rate prescribed in the first section of this article, and no more.† Interest on accounts, &c.

SECT. 29. No contract or assurance for the payment of money with interest, or upon which interest has been received, contracted for, taken, or reserved, after a greater rate than is allowed by the preceding sections of this article, shall be thereby rendered void; but whenever in any action brought on such contract or assurance, it shall appear upon a special plea to that effect, or otherwise, that a greater rate of interest has been directly or indirectly reserved, contracted for, taken, or received, than is allowed by law, the defendant shall recover his full costs in such suit, and the plaintiff shall only recover judgment for the principal sum due him without interest thereon; or if he shall have taken or received such interest, or any part thereof, before the rendition of such judgment, the same shall be deducted from such principal sum, and judgment shall be rendered for the balance as above. Effect of usurious contract. *Tyler, et al., v. Denson*, 3 Blackf. 347.

SECT. 30. Any person who shall have paid a greater amount of interest or value than is above allowed, or his personal representatives may recover against the person or the corporation who shall have taken the same, or against the personal representatives of such person, the whole amount of interest or value which he may have paid, if such action be brought within a year after the payment of the same. Illegal interest may be recovered back.

SECT. 31. Every person offending against the provisions of this article shall be compelled to answer on oath any bill that Person taking more than legal

*A note for the payment of a certain sum on a specified day, with interest from the date, if not punctually paid. *Held*, that the interest from the date was recoverable in case of default. *Gully, et al.*, v. *Remy*, 1 Blackf. 69. *Horner* v. *Hunt*, ib. 213. *Wernwag, et al.*, v. *Mothershead, et al.*, 2 Blackf. 401.

†It is a general rule that interest is not allowable on the open, unliquidated accounts of merchants. *Shewel* v. *Givan*, 2 Blackf. 312.

Witnesses are not admissable to prove a custom of merchants in the city of another state, allowing them to charge interest on their accounts, when the courts of that state have refused to recognize the custom. Ib.

The statute gives interest for money had and received, where the money is retained without the owner's knowledge, or where it is retained after it has been demanded. But interest is not recoverable, in other cases, on a count for money had and received. *Hawkins* v. *Johnson*, 4 Blackf. 41.

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interest compelled to answer under oath.

may be exhibited against him in chancery, for the discovery of any sum of money, property, or things in action, reserved, contracted for, taken, or received, in violation of the foregoing provisions, or any of them.

Exempt from fine, &c., if he answer.

SECT. 32. Every person who shall discover on oath, in his answer to any such bill, any such usurious contract or assurance, by which a greater amount or value was reserved, contracted for, received, or taken in interest, than is allowed by law, shall be fully acquitted and discharged from any punishment, fine, penalty, or forfeiture, in any criminal prosecution, which he might have otherwise incurred therefor, by virtue of any of the provisions of this article.

In case of a bill, need not bring money into court.

SECT. 33. Wherever any person shall file a bill in chancery as aforesaid, the court shall not require the payment or deposit of the principal sum, or any part thereof, nor any offer to bring or pay the amount or value of the interest, or any part thereof, into court, as a condition of granting relief to the complainant, in any case of a usurious loan or contract forbidden by this article.

Who shall be compelled to testify as witnesses.

SECT. 34. Every person who is, or has been, a cashier, officer, teller, clerk, or agent, of any bank, corporation, company, individual, or individuals, may be called as a witness in any trial at law, or in chancery, to discover any usurious loan or contract, made, negotiated, or transacted by him as such cashier, officer, teller, clerk, or agent, whether he has an interest in such bank, corporation, or company, or not, or has an interest in such loan, negotiation, or transaction, or the profit thereof, or not, if his name is not used as a party in the suit; and he shall be compelled to disclose, as such witness, the whole of such contract, loan, negotiation, or transaction, and the amount of money, property, or thing in action, reserved, contracted for, taken, or received therein.

Exempted from punishment, &c.

SECT. 35. Every person who shall become a witness, and disclose any usurious contract, loan, or the illegal reserving, taking, or receiving of a greater amount or value as interest than is allowed by law, shall be fully acquitted and discharged from any punishment, fine, penalty, or forfeiture, which he might have incurred therefor, by the force and effect of any provisions hereinafter prescribed in this article.

Punishment for taking illegal interest.

SECT. 36. If any person shall, either directly or indirectly, take, receive, reserve by contract, or agreement, or accept in money, property, or thing in action, or secure in any note, bill, obligation, or security, any greater rate of interest than is allowed and authorized by law, upon any loan or forbearance of any money, property, or thing in action, or is allowed and authorized by law, upon any debt, obligation, contract, or sum of money, shall, upon conviction thereof, upon indictment in the proper circuit court, be fined in double the amount of the excess of interest so taken, received, accepted, reserved, or secured above the rate of interest allowed by law.

How interest shall be calculated in certain cases.

SECT. 37. Whenever in any statute, act, deed, or written or verbal contract, or in any public or private instrument whatever,

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any certain rate of interest is or shall be mentioned, and no period of time is stated for which such rate is to be calculated, interest in every such case shall be calculated by the year, in the same manner as if the words "per annum," or "by the year," or other words to the same effect, had been added to such rate, not to exceed, however, the rate of interest allowed by law. ARTICLE 1.

SECT. 38. Nothing contained in this article shall be construed to affect any law of this state regulating the rate of interest on the college, school, or other public funds, loaned by agents of the state or counties; nor upon the purchase money of any canal, school, seminary, or saline lands, sold pursuant to the provisions of any law of this state. Provisions of this article restricted.

NOTE.—If a new contract be made respecting money previously lent, and a new bond be given, the interest should be calculated up to the time of the new contract, and added to the principal; but this calculation is not to be made at every agreement for forbearance of payments, where no change is made in the securities. *Harvey* v. *Crawford, et al.*, 2 Blackf. 43.

When a payment in part of a demand is made, and the payment exceeds the interest then due, the payment is applied in discharge of the interest, and the surplus goes to the credit of the principal. But if the payment is less than the interest due, the principal remains on interest until payments exceeding the interest are made, and then the payments are applied as above mentioned. *Wasson* v. *Gould, et al.*, 3 Blackf. 18. *Harvey* v. *Crawford, et al.*, 2 Blackf. 43.

CHAPTER 32.

OF LIMITED PARTNERSHIPS AND GENERAL PROVISIONS RESPECTING CORPORATIONS.

ARTICLE 1. Of limited partnerships.
ARTICLE 2. General provisions respecting corporations.

ARTICLE 1.

Of limited partnerships.

SECTION
1. Limited partnerships, by whom formed.
2. How formed, and the liability of general and special partners.
3. Partners shall sign a certificate, etc.
4. Partnership, when deemed formed, etc.
5. Publication of notice.
6. Renewal and continuance of partnership.
7. Whose names shall be used.
8. Capital stock not to be withdrawn. —Partners, when liable, to refund dividends, etc.
9. Case of insolvency.
10. Assent of creditors. when presumed. —Notice of assignment, etc.
11. Suits by and against partners.
12. Partnership, how dissolved.
13. Liability and rights of members.

SECTION 1. Limited partnerships for the transaction of mercantile, mechanical, or manufacturing business within this state, may be formed by two or more persons, upon the terms and Limited partnerships, by whom formed.

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subject to the conditions and liabilities prescribed in this article; but nothing contained in this article shall authorize such partnerships for the purpose of banking or insurance.

How formed, and the liability of members.

SECT. 2. The said partnerships may consist of one or more persons who shall be called general partners, and shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute to the common stock a specific sum, in actual cash payment, as capital, and who shall be called special partners, and shall not be personally liable for any debts of the partnership, except in the cases hereinafter mentioned.

Partners shall sign a certificate, &c.

SECT. 3. The persons forming such partnership shall make and severally sign a certificate which shall contain the name or firm under which such partnership is to be conducted, the names and respective places of residence of all the general and special partners, distinguishing who are general and who are special partners, the amount of capital which each special partner has contributed to the common stock, the general nature of the business to be transacted, and the time when the partnership is to commence and when it is to terminate.

Partnership, when deemed formed.

SECT. 4. No such partnership shall be deemed to have been formed until a certificate, made as aforesaid, shall be acknowledged by all the partners before some justice of the peace, and recorded in the office of the recorder of the county in which the principal place of the business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership shall have places of business situated in different counties, a copy of the certificate, certified by the recorder in whose office it shall be recorded, shall be filed and recorded in like manner in the office of the recorder in every such county; and if any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable as general partners for all the engagements thereof.

Publication of notice.

SECT. 5. The partners shall, for six successive weeks immediately after such registry, publish a copy of the certificate above mentioned in a newspaper printed in the county where their principal place of business is situated; and if no such paper be there printed, then in a newspaper printed in this state nearest thereto; and in case such publication be not so made, the partnership shall be deemed general.

Renewal, &c., of partnership.

SECT. 6. Upon every renewal or continuation of a limited partnership beyond the time originally agreed upon for its duration, a certificate thereof shall be made, acknowledged, recorded, and published, in like manner as is provided in this article for the original formation of limited partnerships; and every such partnership which shall not be renewed in conformity with the provisions of this section shall be deemed a general partnership.

Whose names shall be used.

SECT. 7. The business of the partnership shall be conducted under a firm in which the names of the general partners only

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shall be inserted, without the addition of the word "company," or any other general term; and the general partners only shall transact the business; and if the name of any special partner shall be used in such firm with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership with any person except the general partners, he shall be deemed and treated as a general partner.

Capital stock not to be withdrawn.—Partners, when liable to refund dividend.

SECT. 8. During the continuance of any partnership under the provisions of this article, no part of the capital stock thereof shall be withdrawn, nor any division of interest or profits be made so as to reduce such capital stock below the sum stated in the certificate before mentioned; and if, at any time during the continuance or at the termination of the partnership, the property or assets shall not be sufficient to pay the partnership debts, then the special partners shall severally be held responsible for all sums by them in any way received, withdrawn, or divided, with interest thereon from the time when they were so withdrawn, respectively.

Assignment in case of insolvency, when good.

SECT. 9. No general assignment by said partnership, in case of insolvency, or where their goods and estate are insufficient for the payment of all their debts, shall be valid unless it shall provide for a distribution of the partnership property among all the creditors in proportion to the amount of their several claims.

Assent of creditors, when presumed.

Notice of assignment required.

SECT. 10. In case of an assignment as provided for in the preceding section, the assent of the creditors shall be presumed, unless, within sixty days after notice thereof, they shall dissent either expressly or by some act clearly implying such dissent; and no such assignment shall be valid unless notice thereof shall be given in some newspaper printed in the county where the place of business of the party making it is situated; or if no newspaper be printed in such county, then in some newspaper printed in this state nearest thereto, within fourteen days after the making of such assignment.

Suits by and against the partners.

SECT. 11. All suits respecting the business of such partnership shall be prosecuted by and and against the general partners only, except in those cases in which provision is made in this article that the special partners shall be deemed general partners, and that special partnerships shall be deemed general partnerships; in which cases all the partners deemed general partners may join or be joined in such suits; and excepting also those cases where special partners shall be held severally responsible on account of any sums by them received or withdrawn from the common stock as before provided.

Partnership, how dissolved.

SECT. 12. No dissolution of a limited partnership shall take place except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the recorder's office in which the original certificate, or the certificate of renewal or continuation of the partnership was recorded; and unless such notice shall also be published for six successive weeks in some newspaper printed

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in the county where the certificates of the formation of such partnership were published according to the provisions of this article; and if no newspaper shall, at the time of such dissolution, be printed in such county, then the notice of such dissolution shall be published in some newspaper printed in this state nearest thereto.

Liability and rights of members.

SECT. 13. In all cases not otherwise provided for in this article, the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners.

ARTICLE II.

General provisions respecting corporations.

SECTION
14. Corporate powers, &c.
15. By-laws.
16. First meeting of corporation.
17. Election of officers.
18. Corporation may hold land, &c.
19. Corporate powers for certain purposes to continue three years after expiration of the charter.
20. How and when creditor or stockholder may apply to the circuit court to appoint receivers and trustees.
21. Jurisdiction and powers of the court therein.
22. Duties of receivers.
23. Balance of assets, &c., how disposed of.

Corporate powers, &c.

SECT. 14. All corporations shall, where no other provision is specially made, be capable, in their corporate name, to sue and be sued, appear, prosecute, and defend, to final judgment and execution, in any courts, or elsewhere;* to have a common seal, which they may alter at pleasure; to elect, in such manner as they shall determine to be proper, all necessary officers, and to fix their compensation, and define their duties and obligations; and to make by-laws and regulations, consistent with the constitution and laws of this state and the United States, for their own government, and for the due and orderly conducting of their affairs, and the management of their property. †

By-laws.

SECT. 15. All corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting all meetings, the number of members that shall constitute a quorum, the number of shares that shall en-

* A corporation legally created in any one of the states may sue in the courts of this state. *The Guaga Iron Company* v. *Dawson*, 4 Blackf. 202.

A party contracting with a corporation is estopped from saying that they were not at the time a corporation. 2 Blackf. 367. But a party is not estopped from denying that the corporation existed at the time the suit was brought. 4 Blackf. 202.

The declaration in a suit brought in a corporate name need not aver the plaintiffs to be a corporation. *Harris* v. *The Muskingum Manufacturing Company*, 4 Blackf. 267.

† The whole corporation is answerable, so far as its franchises are in question for the misconduct of the president and directors, or other select body in the management of the concerns under their control. *Bank of Vincennes S. B.* v. *The State*, 1 Blackf. 267.

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title the members to one or more votes, the mode of voting by proxy, the mode of selling shares for the non-payment of assessments, and the tenure of office of the several officers; but no such by-law shall be made by any corporation repugnant to any provision of its charter.

First meeting of corporations.

SECT. 16. The first meeting of all corporations shall, unless otherwise provided for in their acts of incorporation, be called by a notice, signed by any one or more of the persons named in the act of incorporation, and setting forth the time, place, and purposes of the meeting; and such notice shall, seven days at least before the meeting, be delivered to each member, or published in some newspaper of the county where the corporation may be established, or if there be no newspaper in the county, then in some newspaper of an adjoining county.

Elect officers.

SECT. 17. Such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might by law be transacted at regular meetings of the corporation.

May hold lands.

SECT. 18. Every such corporation may hold lands to an amount authorized by law, and may convey the same.

Corporate powers to continue for three years after end of charter.

SECT. 19. All corporations whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued bodies corporate, for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which such corporations have been or may be established. *

Creditor or stockholder may apply to the cir. court to appoint receiver, &c.—his powers.

SECT. 20. When the charter of any corporation shall expire or be annulled, as provided in the preceding section, the circuit court of the county in which such corporation carries on its business, or has its principal place of business, on application of any creditor of such corporation, or of any stockholder or member thereof, at any time within the said three years, may appoint one or more persons to be receivers or trustees of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all such suits as may be necessary or proper, for the purposes aforesaid; and to appoint

* The debts due to or from a corporation are extinguished by its dissolution; its lands and tenements revert to the grantor and his heirs, and its goods and chattels become vested in the state. *Bank of Vincennes S. B.* v. *The State*, 1 Blackf. 267.

A plea in abatement to an action by a corporation, that the charter is forfeited in consequence of a mis-user or non-user of the franchises cannot be good, unless it show the forfeiture to have been judicially declared at the instance of the government. *John et al.*, v. *The Farmers' and Mechanics' Bank of Indiana*, 2 Blackf. 367.

A plea to a suit by a corporation, stating that the corporation had been dissolved by the acts of its members, without showing the causes and manner of the dissolution, is insufficient. *Harris* v. *The Muskingum Manufacturing Company*, 4 Blackf. 267.

As to a judgment against a corporation in case of a forfeiture, the effect of such judgment, &c., see *Bank of Vincennes S. B.* v. *The State*, 1 Blackf. 267.

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an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the power of such receivers may be continued beyond the said three years, and as long as the court shall think necessary for the purposes aforesaid.

Jurisdiction of the court, &c.

SECT. 21. The said court shall have jurisdiction in chancery of such application, and of all questions arising in the proceedings thereon, and may make such orders, injunctions, and decrees thereon as justice and equity shall require.

Duty of receivers.

SECT. 22. The said receivers shall pay all debts due from the corporation, if the funds in their hands shall be sufficient therefor, and if not, they shall distribute the same rateably among all the creditors, who shall prove their debts in the manner that shall be directed by any order or decree of the court for that purpose; and if there shall be any balance remaining after the payment of said debts, the receivers shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders or members of the corporation, or their legal representatives.

Balance of assets, how disposed of.

SECT. 23. If there shall be no person entitled to receive the same, or any part thereof, it shall be paid into the state treasury, to be disposed of in such manner as the general assembly may at any time direct.

CHAPTER 33.

OF PREVENTING FRAUDS AND PERJURIES IN CONTRACTS, AND IN ACTIONS FOUNDED THEREON.

SECTION

1. What contracts, &c. shall be in writing.
2. Consideration in such case need not be in writing.
3. What trusts shall be created by writing.
4. Resulting trusts.
5. Specific performance, &c.
6. Representation of character, &c. may be in writing.
7. Contracts respecting goods, &c. of the value of fifty dollars or more, to be in writing, &c.
8. Sale without delivery, how far void.
9. Term "creditors" defined.
10. Mortgage of goods, &c. must be recorded.
11. When deemed recorded.
12. Last four sections qualified.
13. Conveyances to defraud purchasers void.

SECTION

14. Case in which conveyance, &c. shall not be deemed fraudulent.
15. Conveyance, &c. revocable at the will of the grantor, when deemed void.
16. Power to revoke, &c.; when conveyance shall not be affected thereby.
17. Such conveyance valid from the time the power shall vest, &c.
18. Conveyances, &c. to defraud, delay, or hinder creditors, &c., void.
19. Deeds of gift, &c., of goods, &c., void as against creditors.
20. All such conveyances, &c. void as to representatives of creditors, &c.
21. Case in which purchaser's title shall not be affected, &c.
22. Question of fraudulent intent, &c. and consideration.
23. Terms 'estate' and 'interest' defined.
24. Term "conveyance" defined.
25. What shall be a sufficient sealing.

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ARTICLE 1.

SECTION 1. No action shall be brought in any of the following cases:

What contracts, &c. shall be in writing.

1. To charge an executor or administrator, upon any special promise, to answer damages out of his own estate; or,*

2. To charge any person, upon any special promise, to answer for the debt, default, or miscarriage of another; or,

29 Charles II., Cap. 3, sec. 4. A. D. 1676.

3. To charge any person, upon any agreement or promise, made in consideration of marriage; or,

4. Upon any contract for the sale of lands, tenements, or hereditaments, or of any interest in or concerning them; or,†

5. Upon any agreement that is not to be performed within one year from the making thereof;

Unless the promise, contract, or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized; excepting, however, leases not exceeding the term of three years, as specified in the sixteenth section of the 28th chapter of these revised statutes.

Consideration need not be in writing.

SECT. 2. The consideration of any such promise, contract, or agreement, need not be set forth or expressed in the writing to be signed by the party to be charged therewith, but may be proved by any other legal evidence.

What trust shall be created by writing.

SECT. 3. Every grant, conveyance, or assignment of any existing trust in lands, tenements, hereditaments, goods, or things in action, unless the same shall be in writing, signed by the party making the same, or his lawful agent, shall be void.

Resulting trusts. See chap. 28, sec. 165—173.

SECT. 4. Nothing contained in any law of this state shall be construed to prevent any trust from arising, resulting, or being extinguished by implication or operation of law.‡

Specific performance.

SECT. 5. Nothing contained in any statute of this state shall be construed to abridge the powers of courts of equity to compel the specific performance of agreements in cases of part performance of such agreements.

*The promise of an administrator to pay a debt of the intestate, need not be averred in the declaration to be in writing; the statute applying to the proof, and not to the declaration. *Mills, et al.*, v. *Kuykendall*, 2 Blackf. 47, and page 51, note 2.

When a promise is required by law to be in writing, it may be declared on generally, without averring it to be in writing; but a plea founded on such a promise must show that it is in writing, or it will be bad on special demurrer.

If a third person be induced to purchase the assignment of a note due from an intestate's estate, by the promise of the administrator that it shall be paid, the promise is not within the statute of frauds, and the administrator is personally liable to the assignee. *Hackleman* v. *Miller, et al.*, 4 Blackf. 322.

†A receipt for the purchase money of real estate may constitute a sufficient agreement under the statute of frauds, provided it show on its face, or by reference to some other instrument, every material part of a valid contract on the subject, but not otherwise. *Blackman* v. *Kuykendall*, 6 Blackf. 21.

A and *B* purchased jointly a land office certificate for a tract of land on which there were some improvements, and the assignment of the certificate was made to *A*, who had paid more of the purchase money than *B*. The purchasers, by a parol agreement, divided the land; by this agreement, *A* received several acres more than *B*, together with the improved part of the premises, and was to pay *B* a certain sum as the difference in value of the two parts, and to assist *B* in improving his part. Each of the parties took possession of his own part of the premises. *Held*, that the agreement was not affected, in equity, by the statute of frauds. *Green, et al*, v. *Vardiman, et al.*, 2 Blackf. 324.

‡See *Elliott* v. *Armstrong*, 2 Blackf. 198. *Jennison, et al.*, v. *Graves, et al.*, 2 Blackf. 440. *Blair* v. *Bass*, 4 Blackf. 539. *Brown* v. *Benight, et ux.*, 3 Blackf. 39. *Stanley* v. *Brannon, et al.*, 6 Blackf. 193.

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Representation of character, &c. must be in writing.

SECT. 6. No action shall be maintained to charge any person upon, or by reason of any representation or assurance made concerning the character, conduct, credit, ability, trade, or dealings of any other person, when such action is brought by the person to whom such representation or assurance was made, unless such representation or assurance be made in writing, and signed by the party to be charged thereby, or by some person thereunto, by him legally authorized.

Contract for goods, &c. of fifty dollars or more to be in writing. 29 Charles II., Cap. 3, S. 17.

SECT. 7. No contract for the sale of any goods, wares, or merchandise for the price of fifty dollars or more, shall be good or valid, unless the purchaser shall accept and receive part of such property so sold, or shall give something in earnest to bind the bargain, or in part payment; or unless some note or memorandum in writing of the bargain be made and signed by the party to be charged thereby, or by some person thereunto, by him lawfully authorized.

Sale without delivery, how far void. 2 Kent, 528, note *a*. See sec. 22.

SECT. 8. Every sale made by a vendor of goods and chattels in his possession, or under his control, and every assignment of goods and chattels by way of mortgage or security, or upon any condition whatever, unless the same be accompanied by an immediate delivery, and be followed by an actual change of the possession of the things sold, mortgaged, or assigned, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith, and shall be conclusive evidence of fraud, unless it shall be made to appear, on the part of the persons claiming under such sale or assignment, that the same was made in good faith, and without any intent to defraud such creditors or purchasers.

Term 'creditors' defined.

SECT. 9. The term "creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor, at any time whilst such goods and chattels were in his possessien or under his control.

Mortgage of goods, &c. must be recorded.

SECT. 10. No assignment of goods and chattels, by way of mortgage or security, or upon any condition whatever, shall be valid against any other person than the parties thereto, where the possession of such goods and chattels is not delivered to the mortgagee or assignee, and retained by him, unless such assignment shall be proved or acknowledged as provided in cases of deeds of conveyance, and recorded in the recorder's office of the county where the mortgagor or assignor resides, within ten days after the execution thereof.

When deemed recorded.

SECT. 11. Every such assignment shall be considered as recorded from the time it shall be left at the proper recorder's office for that purpose.

Last four sections qualified.

SECT. 12. Nothing contained in the last preceding four sections shall avoid or defeat any contract of bottomry or respondentia, nor any transfer, assignment, or hypothecation of any ship, vessel, or goods abroad, if the mortgagee shall take possession of such ship, vessel, or goods, as soon as may be, after the arrival thereof within the jurisdiction of this state.

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ARTICLE 1.

SECT. 13. Every conveyance of any estate or interest in lands, tenements, or hereditaments, or the rents and profits thereof; and every charge, trust, limitation of use or uses, upon or in any lands, tenements, or hereditaments, or the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers, for a valuable consideration, of the same lands, tenements, hereditaments, estate, interest, rents, or profits, as against such purchasers for a valuable consideration, shall be void.

Conveyances to defraud purchasers void, &c. 27 Elizabeth, Cap. 4, sec. 2, A. D. 1585; 4 Kent, 463.

SECT. 14. No such conveyance, charge, estate, interest, use, or trust, otherwise valid, shall be deemed fraudulent in favor of a subsequent purchaser, who shall have actual or legal notice thereof, at the time of his purchase, unless it shall appear that the alienee or grantee in such conveyance, or person to be benefited by such charge, estate, interest, use, or trust was privy to the fraud intended.

Case in which conveyance shall not be deemed fraudulent.

SECT. 15. Every conveyance or charge of or upon any estate or interest in lands, tenements, or hereditaments, containing any provision for the revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void, as against subsequent purchasers from such grantor, for a valuuble consideration, of any estate or interest, so liable to be revoked or determined, although the same be not expressly revoked, determined, or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

Conveyance revocable at the will of grantor, when void. 27 Elizabeth, Cap. 4, sec. 5; 2 Kent, 440, 441.

SECT. 16. Where a power to revoke a conveyance of any lands, or the rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid, in the same manner, and to the same extent, as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

Power to revoke, &c. when conveyance shall not be affected thereby.

SECT. 17. If a conveyance to a purchaser, under either of the last two preceding sections shall be made, before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation shall actually vest in such person, in the same manner, and to the same extent, as if then made.

Conveyance valid from the time the power shall vest, &c.

SECT. 18. All conveyances or assignments in writing or otherwise, of any estate or interest in lands, tenements, or hereditaments; or of goods, chattels, or things in action; every charge upon lands, goods, chattels, things in action, or the rents or profits thereof; and all bonds, agreements, contracts, evidences of debt, suits, judgments, decrees, and executions, made or suffered with the intent to hinder, delay, or defraud creditors

Conveyances, &c., to defraud or hinder creditors, void. 3, Hen. VII, Cap. 4. A. D. 1486. 13 Eliz. Cap. 5, s., 2. A. D. 1570. 2 Kent 440.

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or other persons of their lawful suits, damages, forfeitures, debts, or demands, shall be void. *

Deeds of gift, &c., void as against creditors. 2 Kent 440.

SECT. 19. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

All such deeds, &c., void as to heirs, &c. 13 Eliz. Cap 5, s., 2. 27 Eliz. Cap. 4, s., 2.

SECT. 20. Every conveyance, charge, instrument, act, or proceeding, declared by the provisions of this chapter to be void, as against creditors or purchasers, shall be equally void against the heirs, successors, personal representatives, or assignees of such creditors or purchasers.

Case in which purchaser's title, &c., shall not be affected.

SECT. 21. The provisions of this chapter shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, feoffer, or assignor; or of the fraud rendering void the title of such grantor, feoffer, or assignor.

Question of fraudulent intent, &c. 2 Kent 528, 442 note *a*. Same 441, note *d*.

SECT. 22. The question of fraudulent intent, in all cases arising under the provisions of this chapter shall be deemed a question of fact and not of law; nor shall any conveyance or charge be adjudged fraudulent, as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

Terms "estate" and "interest" defined.

SECT. 23. The terms "estate" and "interest in lands," as used in this chapter, shall be construed to embrace every estate and interest, freehold and chattel, legal and equitable, present and future, vested and contingent, in lands, tenements, and hereditaments.

Term "conveyance" defined.

SECT. 24. The term "conveyance" as used in this chapter, shall be construed to embrace every instrument in writing, (except a last will and testament,) whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered.

What shall be a sufficient sealing.

SECT. 25. All deeds, conveyances, bonds, and powers of attorney, for the conveyance of real estate or of any interest therein, shall be executed with a seal, either of wax or wafer, or of ink, otherwise called a scrawl; and all other instruments of writing to which, by law or the agreement of the parties, a seal is necessary, may be sealed by any of those methods, and each shall have the same effect in law, except where any statute of this state shall require a specific seal to any instrument of writing. †

* The conveyance passes the title to the grantee subject to the rights of creditors, and subsequent purchasers who claim under creditors; and cannot be questioned by the grantor himself, or by strangers who have no claim. *Lessee of Burget* v. *Burget*, 1 Ohio R. 469. *Barr* v. *Hatch et al.*, 3 Ohio R. 395.

† It is not necessary to the validity of a scrawl as a seal that there should be enclosed in it, the word *seal*, or a letter denoting that word. *Kilgore* v. *Powers*, 5 Blackf. 22.

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CHAPTER 34.

OF GAMING CONTRACTS.

SECTION
1. Gaming contracts void.
2. Person losing money, &c. may recover the same.
3. Averments in declaration.
4. Suit for the benefit of the loser's family, &c.
5. Bill in chancery.
6. Answer on oath, &c. shall exempt winner from fine, &c.

Gaming contracts void.

SECTION 1. All promises, agreements, notes, bills, bonds, contracts, mortgages, or other securities whatsoever, made or entered into hereafter, when the whole or any part of the consideration of such promise, agreement, conveyance, or security, shall be for money, or other valuable thing whatsoever, won, laid, or bet, on the result of any election, at cards, dice tables, tennis balls, or other game or games whatsoever, or at any horse-race, or cock-fighting, or any other sport or pastime, or on any wager whatever, or for the reimbursing or repaying any money lent or advanced at the time of such play, bet, or wager, for the purpose of being bet or wagered, shall be utterly void and of no effect, to all intents and purposes whatsoever.

Person losing and paying money may recover the same.

SECT. 2. If any person or persons, at any time, by playing or betting at or on any game, games, or wager, or betting on the hands or sides of such as do play at any game or games, shall lose to any one or more persons so playing or betting, any sum of money, or any valuable thing, and shall pay or deliver the same, or any part thereof, the person or persons so losing and paying or delivering the same, shall be at liberty, within six months next following, to sue for and recover the money, or other valuable thing so lost and paid or delivered, or any part thereof, with costs of suit, by action of debt, founded on this chapter, to be prosecuted in any court, or before any justice of the peace having jurisdiction thereof.

Averments in declaration.

SECT. 3. In such action, it shall be sufficient for the plaintiff to allege that the defendant is indebted to the plaintiff, or has received for the plaintiff's use, the money so lost and paid, or that he has converted the goods won of the plaintiff to his the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this chapter, without setting forth the special matter.

Suit for the benefit of the loser's family, &c.

SECT. 4. In case the party so losing such money or other thing aforesaid, shall not, within the time aforesaid, bona fide, without covin or collusion, sue, and with effect prosecute for the money or other thing so lost and paid or delivered, it shall and may be lawful to and for any other person or persons, by any such action or suit as aforesaid, to sue for and recover the same, with costs of suit, against any such winner or winners, for the benefit of the family or next of kin, to the person or persons

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losing the same; and in case there shall be no such family or kindred, then for the benefit of the county seminary.

Bill in chancery.

SECT. 5. Every person, by virtue of this chapter, who shall or may be liable to be sued for money or other thing so won as aforesaid, shall be compelled to answer on oath any bill or bills in chancery, preferred against him or them, for discovering the money or thing so won as aforesaid.

Answer on oath, &c. shall exempt winner from fine, &c.

SECT. 6. Upon discovery and repayment of the money or things so to be discovered or repaid as aforesaid, the person or persons discovering and repaying the same with costs, shall be acquitted, indemnified, and discharged from any further or other forfeiture, punishment, or penalty, which he or they may have incurred, by playing for or winning such money, or other things so discovered and repaid.

CHAPTER 35.

OF THE DOMESTIC RELATIONS.

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ARTICLE 2. Of divorce.
ARTICLE 3. Some general provisions respecting parents and children.
ARTICLE 4. Of guardians and wards.
ARTICLE 5. Of masters and apprentices.

ARTICLE 1.

Of marriage.

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2. Who may contract marriage.
3. Marriage, a former husband or wife living, void.
4. Marriage of whites and negroes forbidden—insane persons and idiots incapable of.
5. Marriages in evasion of the law void.
6. By whom marriages shall be solemnized.
7. Society of friends.
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ARTICLE 1.

Marriage. 2 Kent, 75.

SECTION 1. Marriage, so far as its validity in law is concerned, shall continue in this state, a civil contract, to which the consent of parties capable by law of entering into such contract, shall be essential.

Who may marry. 2 Kent, 82.

SECT. 2. Males who shall have attained the age of seventeen years, and females who shall have attained the age of fourteen years, and whose marriage is not prohibited by the laws of God, shall be capable in law of contracting marriage.

Void marriage, &c.

SECT. 3. All marriages contracted whilst either party had a former wife or husband living, as the case may be, shall be void, unless the former marriage, previous to such second marriage, shall have been dissolved by a court of competent authority.

Marriage of whites and negroes forbidden

SECT. 4. No white person shall intermarry with a negro or mulatto, and no insane person or idiot shall be capable of contracting marriage.

Marriages in evasion of the law void. 2 Kent, 91, 94.

SECT. 5. Where any persons resident in this state shall undertake to contract a marriage, contrary to the preceding provisions of this article, and shall, in order to evade these provisions, and with an intention of returning to reside in this state, go to another state, territory, or country, and there have their marriage solemnized, and shall afterwards return and reside here, such marriage shall be deemed void in this state.

By whom marriages shall be solemnized.

SECT. 6. Marriages, except as provided in the next section, shall be solemnized only by the following persons:

1. Ministers of the gospel, and priests of every denomination, who are regularly licensed or ordained as such, so long as they continue to be members and ministers or priests in the denomination or church by which they shall have been licensed or ordained.

2. Judges of the supreme and circuit courts of this state, judges of the probate courts, and justices of the peace, within their respective jurisdictions.

Society of Friends.

SECT. 7. The Society of Friends, commonly called Quakers, shall have full power and authority to join together as husband and wife, all who may apply to them, according to the rules and regulations used and practised in their society.

License.

SECT. 8. Before any persons shall be joined in marriage, by any one authorized to solemnize marriage, according to the provisions of the sixth section of this article, they shall produce a license from the clerk of the circuit court of the county in which the female resides, directed to any person empowered by law to solemnize marriages, and authorizing him to join together the persons therein named, as husband and wife.

Residence of female.

SECT. 9. Such clerk shall not grant a marriage license in any case, until it is proved to him by the affidavit of a competent and disinterested witness, resident of the same county, that such female resides and has resided therein, for one month immediately preceding the application for such license, except in cases where such clerk shall know certainly the fact of such residence.

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Parent's consent, &c.

SECT. 10. If either of the persons intending to marry is a male under the age of twenty-one years, or a female under the age of eighteen years, and shall not have had a former wife or husband, the clerk shall not issue a license to such person without the consent of the parent or guardian having the custody of such minor, if there be any in this state competent to act.

How such consent shall be evidenced.

SECT. 11. Such consent shall be personally given before such clerk, by such parent or guardian, or shall be certified under the hand of such parent or guardian, and attested by a competent witness, who is a resident of such county, and who shall make oath before such clerk that he saw such parent or guardian subscribe such certificate, or heard him or her acknowledge the same.

Affidavit of witness.

SECT. 12. Whenever the clerk is not fully satisfied of the age of any of the parties intending to marry, or the residence of the female, the affidavit of any credible witness residing in the county may be received by such clerk, and shall be a sufficient acquittal and justification to him for granting a license, if said witness states in such affidavit that he is acquainted with said parties, that he has reason to believe, and verily does believe, that they are of lawful age to marry, without the consent of their parent or guardian, as the case may be, that he knows of no lawful reason why they should not marry, and that said female has resided in said county for one month immediately previous to the making of said application for license.

Society of Friends.

SECT. 13. Nothing contained in this article shall be deemed and taken as requiring any persons who shall be joined in marriage, in a public meeting of the society of Friends, as above prescribed, to produce a marriage license from the clerk of any court.

Form of marriage ceremony.
2 Kent, 86.

SECT. 14. When any marriage is solemnized, the ceremony of marriage may be according to such form or custom as the person solemnizing the same may choose to adopt; but in all cases, no particular form or ceremony shall be necessary, except that the parties shall declare in the presence of the person solemnizing the marriage, that they take each other as husband and wife; and no marriage solemnized before any person professing to be an officer or minister authorized by law to solemnize marriages, shall be adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority in such supposed officer or minister, or on account of any omission or informality in issuing or granting the license, if the marriage in other respects be lawful, and be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

2 Kent, 90.

Certificate of marriage to be filed, &c.

SECT. 15. Every person who shall solemnize any marriage, by virtue of the provisions of this article, shall, within three months thereafter, file a certificate thereof in the clerk's office of the county in which such marriage was solemnized.

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ARTICLE 1.

Shall be recorded by the clerk.

SECT. 16. Every such certificate thus filed shall be recorded by the clerk with the record of the license, in a book to be by him kept for that purpose; and every such original license and certificate, the said record thereof, and a copy of such record duly certified, attested, and sealed by the clerk of said court, shall be presumptive evidence of the fact of such marriage.

Action against clerk for granting license contrary to law.

SECT. 17. Every clerk of any circuit court who shall grant a marriage license to any male under the age of twenty-one years, or female under the age of eighteen years, without the consent of the parent or guardian of such male or female, personally given, or proved before him by affidavit, as herein required, shall for such offence be liable to pay to such parent or guardian, the sum of five hundred dollars, to be recovered in an action of debt, with costs of suit, in any court of competent jurisdiction.

Clerk may be indicted, &c.

SECT. 18. Every clerk of any circuit court who shall grant any marriage license to any female, who shall not have resided in the county in which such license was granted, for one month immediately preceding the time of granting such license, shall, upon indictment therefor, in any court having jurisdiction, be fined in any sum not exceeding five hundred dollars, and the costs of prosecution, unless he required and took the affidavit of a witness respecting such residence, as required in this article.

Person solemnizing marriage contrary to law, how punished.

SECT. 19. If any person empowered to solemnize marriage, shall join any persons in marriage contrary to the provisions of this article, knowing that the marriage is not duly authorized, he shall, upon conviction thereof upon indictment in any court having jurisdiction, be fined in any sum not exceeding five hundred dollars, and costs of suit; and shall moreover be declared forever after incapable of solemnizing marriages.

Punishment for failing to return certificate.

SECT. 20. If any person having solemnized a marriage, shall fail or neglect to file a certificate thereof in the proper clerk's office, as in this article required, he shall, upon conviction thereof, upon indictment in any court having competent jurisdiction, be fined the sum of five dollars for every month he shall continue to fail or neglect to file such certificate, from and after the expiration of the time within which he is required by this article to file the same.

Person not authorized to solemnize marriage, how punished, &c.

SECT. 21. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, he shall, upon conviction thereof in any court having jurisdiction, be fined in any sum not less than fifty nor more than five hundred dollars, to which may be added imprisonment in the county jail for a term not exceeding three months.

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ARTICLE II.

Of divorce.

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23. What marriages voidable.
24. Libel to establish nullity of a marriage.
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28. When declared invalid on libel of insane person.
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70. Foreign divorces.
71. Effect of decree of divorce as to both parties.
72. Divorces a mensa et thoro prohibited.

What marriages shall be void.
2 Kent, 75.

SECT. 22. All marriages which are prohibited by law, on account of consanguinity or affinity between the parties, or on account of either having a former wife or husband then living; all marriages between a white person and a negro or mulatto,

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ARTICLE 2.

if solemnized within this state, shall be absolutely void without any decree of divorce or other legal proceeding.

What marriage voidable.

SECT. 23. When either of the parties to a marriage shall be incapable, for want of age or understanding, of consenting to a marriage, or shall be incapable, from physical causes, of entering into the marriage state, or when the consent of either party shall have been obtained by force or fraud, the marriage shall be void from the time its nullity shall be declared by a court of competent authority.

Libel to establish nullity of a marriage. 2 Kent 76, 96.

SECT. 24. When a marriage is supposed to be void, or the validity of such marriage is disputed for any of the causes mentioned in the two preceding sections, either party may file a libel for annulling the same; the libel to be filed in the manner hereinafter prescribed in the case of a bill for a divorce; and upon due proof of the nullity of the marriage, it shall be declared void by a sentence of nullity.

Libel to affirm marriage.

SECT. 25. When the validity of a marriage shall be denied or doubted by either of the parties, the other party may file a libel in manner aforesaid, for affirming the marriage, and upon due proof of the validity thereof, it shall be affirmed and declared valid by a decree or sentence of the court; and such decree shall be conclusive upon all the persons concerned.

When libel may be filed by the parent.

SECT. 26. A libel to ascertain the validity of a marriage on the ground that one of the parties was under the age of legal consent, may be brought by the parent or guardian entitled to the custody of such minor; but in no case shall such marriage be declared a nullity if it shall appear that the parties, after they had attained the age of legal consent, had, for any time, freely cohabited together as husband and wife.

In case of idiocy, &c.

SECT. 27. When the validity of any marriage is doubted or questioned, or such marriage is supposed to be void on the ground of the idiocy or insanity of either of the parties at the time of contracting the marriage, the libel in such case may be filed and prosecuted by any relative or other person admitted to prosecute as the next friend of such idiot or insane person.

When on libel by insane person.

SECT. 28. The marriage of such insane person, may also be declared void on his or her own application after the restoration of reason; but in such case no sentence of nullity shall be pronounced, if it shall appear that the parties freely cohabited together as husband and wife, after such insane person was restored to a sound mind.

Marriage shall not be declared null on application of offending party.

SECT. 29. A marriage shall in no case be declared a nullity on the application of a party capable of contracting, who entered into the marriage state with any person under the age of legal consent; nor shall the marriage of a person capable of contracting with any idiot or insane person, be annulled on the application of such person thus capable to contract, if he knew of such idiocy or insanity at the time of such marriage.

Issue illegitimate in cases of void marriage.

SECT. 30. The issue of a marriage that is void, on account of consanguinity or affinity between the parties, or of any mar-

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riage between a white person and a negro or mulatto, shall be deemed to be illegitimate.

How far legitimate in other cases.

SECT. 31. Upon the dissolution of a marriage, on account of the non-age, insanity, or idiocy of either party, the issue of the marriage shall be deemed to be, in all respects, the legitimate issue of the parent who, at the time of the marriage, was capable of contracting such marriage.

In case of a prior marriage.

SECT. 32. When a marriage is dissolved on account of the prior marriage of either party, and it shall appear that the second marriage was contracted in good faith, and with the full belief of the parties that the former wife or husband was dead, that fact shall be stated in the sentence of divorce or nullity; and the issue of such second marriage, born or begotten before the commencement of the suit, shall be deemed to be the legitimate issue of the parent who, at the time of the marriage, was capable of contracting such marriage.

In voidable marriages, issue not deemed illegitimate until decree.

SECT. 33. The issue of any marriage declared void by the second section of this article, shall not be deemed illegitimate in any case, until the invalidity of the marriage has been declared by a sentence of nullity, and then only to the extent prescribed in the preceding sections.

Sentence of nullity after death of parties.

SECT. 34. If such sentence has not been obtained in the lifetime of the parties, or either of them, a libel may be brought by any person interested to avoid such marriage.

How far the sentence conclusive.

SECT. 35. A sentence of nullity, if pronounced in the lifetime of the parties, shall be conclusive evidence of the invalidity of the marriage, in all courts and proceedings; but if pronounced after the death of the parties, or either of them, to such marriage, it shall only be conclusive as against the parties in the suit, and those claiming under them.

Marriages annulled on libel, &c.

SECT. 36. Suits to annul a marriage shall be by libel, and shall be prosecuted as suits brought to obtain a decree of divorce; and the court shall have the same powers to award issues, to decree costs, and enforce its orders and decrees, as in other cases.

Declarations of parties.

SECT. 37. No sentence of nullity of a marriage shall be pronounced solely on the declarations or confessions of the parties; but the court shall, in all cases, require other satisfactory evidence of the existence of the facts on which the allegation of nullity is founded.

Divorces, how decreed.

SECT. 38. Divorces dissolving the marriage contract may be decreed by the several circuit courts of this state sitting in chancery for any of the causes hereinafter mentioned, whenever the party suing for such divorce has resided in this state for the term of two years immediately preceding the filing of his or her bill of complaint.*

* The constitutional provision prohibiting laws impairing the obligation of contracts, does not extend to general laws authorizing divorces; provided the legislature, in the exercise of its power, does not pass beyond the rights of its own citizens, and act upon the rights of the citizens of other states. *Tolen* v. *Tolen*, 2 Blackf. 407.

In a suit for a divorce, the lex domicilii is the rule of decision. Ib.

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ARTICLE 2.

In what county bill shall be filed.

SECT. 39. A bill for a divorce must be filed and prosecuted in the circuit court of the county in which the complainant has his or her usual place of residence, without regard to the place where the alleged cause or causes of divorce occurred.*

Causes of divorce.

SECT. 40. Divorces shall be decreed, upon the application of the injured party, for any of the following causes:

Adultery.

1. For adultery.

Impotency.

2. For impotency.

Abandonment.

3. For the abandonment of one party by the other, for the space of two whole years next preceding the filing of the bill, without the intention of returning.

Inhuman treatment, &c.

4. Where the treatment of the wife by the husband has been cruel and inhuman; or when his conduct towards her has been such as may render it unsafe and improper for her to live with him.

Habitual drunkenness, &c.

5. When the husband shall have been a habitual drunkard for the space of two years immediately preceding the filing of such bill; or shall have unreasonably failed to make suitable provision for his family.

Crime.

6. Where either party, subsequently to the marriage, shall have committed any crime within the state, or any other state, territory, or country, the punishment whereof is imprisonment at hard labor in the state prison, by the laws of this state; and,

7. In any other case where the court, in the exercise of a sound discretion, shall deem it reasonable and proper that a divorce should be granted.†

Bill shall specify causes, &c.

SECT. 41. A bill for a divorce shall specify the cause or causes of divorce, on which the complainant relies, with the usual certainty required by the law and practice of courts of chancery in bills of complaint.‡

Subpœna.

SECT. 42. When such bill is filed in the clerk's office of the court having jurisdiction, the clerk shall issue a subpœna in chancery, for the defendant to appear and answer said complainant's bill of complaint, which, with an attested copy of said bill, shall be personally served on such defendant, if a resident of the state.

Notice to non-resident.

SECT. 43. If it shall be made to appear by the affidavit of a disinterested person, or by the return of the officer to whom such subpœna was directed, that the defendant is not a resident of this state, an order for the publication of the pendency of said bill shall be made and published in like manner as provided in similar cases in proceedings in chancery.

*Petition by the wife for a divorce. The marriage was solemnized in Kentucky, where the parties then resided. The husband there, in 1822 or 1823, deserted his wife, and has ever since lived in adultery with another woman. Two or three years after the desertion, the wife removed to this state, where she has since that time resided. The husband was never resident here, and the notice to him of the pendency of the suit was by publication. *Held*, that the circuit court, under the statute, has jurisdiction of the cause. *Tolen* v. *Tolen*, 2 Blackf. 407.

†This seventh clause is constitutional. See *Ritter* v. *Ritter*, 5 Blackf. 81.

‡A petition for divorce on account of adultery should state the time and place when and where the offence was committed. *Christianberry* v. *Christianberry*, 3 Blackf. 202.

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PART II

Fourteen days after service, &c., court may hear the cause.

SECT. 44. At any term of the court, after the expiration of fourteen days from the service of such subpœna, or thirty days after publication shall have been made as aforesaid, the court may proceed to hear and determine such cause.

SECT. 45. The practice and proceedings in every such suit shall be the same as in other cases in chancery, except as provided in this section as follows:

Proceedings to be as in chancery, except, &c.

1. The defendant, as to so much of said complainant's bill as contains the alleged cause or causes of divorce, may answer the same, without oath or affirmation, by a general denial thereof.

2. The defendant may, in his or her answer in the nature of a cross bill, allege any cause or causes of divorce against such complainant.

3. On the hearing or trial of any bill for a divorce, or such answer in the nature of a cross bill, the default of either party to answer the same, or failure to appear, shall in no case dispense with proof of the allegations made by the parties respectively.

4. Witnesses may be examined orally in court, and testimony received in such hearing or trial, as in trials at common law.

5. Although the cause of divorce charged be admitted by the opposite party, or the bill, or answer in the nature of a cross bill, be taken as confessed, a decree of divorce shall not be rendered for such cause, without due proof thereof.

Rules in cases where adultery is alleged.

SECT. 46. Where adultery is alleged and established as a cause of divorce, the court shall deny a divorce in the following cases:

1. Where the offence shall appear to have been committed by the procurement or with the connivance of the party alleging such cause of divorce.

2. Where the adultery charged shall have been forgiven by the injured party; and such forgiveness may be proved by express proof, or by the voluntary cohabitation of the parties, with the knowledge and belief of the fact.

3. Where there shall have been no express forgiveness or voluntary cohabitation of the parties, but the suit for a divorce shall not have been brought within two years after discovery by the complainant of the offence charged.

3 Blackf. 202.

4. Where it shall be proved that the complainant has also been guilty of adultery, under such circumstances as would have entitled the opposite party, if innocent, to a divorce.

Interlocutory orders.

SECT. 47. Pending a suit for divorce, the court may make such temporary orders relative to the persons or property of the parties as in their discretion they shall deem necessary and proper; and may by order of court compel the husband to disclose on oath, in writing, in answer to written interrogatories, or otherwise, as the court shall direct, what personal and real estate he has received in right of his wife, how the same has been disposed of, and what amount thereof remains in his hands, or subject to his use or control; and the court shall have full power to carry any order provided for in this section into effect,

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by attachment or otherwise, as may be deemed expedient and right. ARTICLE 2.

SECT. 48. The presiding judge alone, or the associate judges of such court together, may, in vacation, upon bill filed, or answer in the nature of a cross bill, make such temporary orders as may be necessary to carry into effect the provisions of the last preceding section. Same in vacation.

SECT. 49. A bill for a divorce may be exhibited by a wife in her own name. Bill by wife.

SECT. 50. Wherever the party complained of is insane, or an idiot, at any time during the pendency of the suit, the court may appoint some suitable person as a guardian, to appear to take care of the rights and interests of such party, in like manner as a guardian is appointed for an infant party in any other suit. Party insane, &c., court may appoint guardian.

SECT. 51. After the filing of a bill for a divorce, the court, for any good cause shown, may prohibit the husband from imposing any restraint on the personal liberty of the wife during the pendency of the bill. Court may restrain husband pending the bill.

SECT. 52. The court may also, during the pendency of such bill, on the application of either party, make such order for the care, maintenance, and custody of the children as may be deemed expedient and for the benefit of the children. Care, &c. of the children pending the bill.

SECT. 53. Upon the dissolution of the marriage, by sentence of nullity, or by divorce, for the misconduct of the husband, the wife shall be entitled to the immediate possession of her real estate in like manner as if the husband were dead. Divorce, &c. for misconduct of husband, wife shall be restored to her real estate.

SECT. 54. In every such case, the court may decree for restoring to the wife the whole, or such part as they shall think just and reasonable, of the personal estate that shall have come to the husband by reason of the marriage, or for awarding to her the value thereof in money, to be paid by the husband. Personal estate.

SECT. 55. If the real estate of the wife shall have been disposed of by the husband and wife during the coverture, he may, in the case above specified, be required to account for the same; and the court may require him to pay such amount thereof to her as may be just and reasonable. Husband may be required to account.

SECT. 56. When a divorce shall be decreed for the misconduct of the husband, if the estate and property assigned to the wife by the preceding provisions are an insufficient allowance for the wife and the support of such of the children as shall be committed to her care and custody by the decree of the court, or if there be no such estate and property as above specified, the court may decree to her such part of the personal estate of the husband, and such alimony out of his estate as shall be just and reasonable, taking into view the whole property of the husband wherever it may be, and having regard to the ability of the husband and the character and situation of the parties, and all other circumstances connected with the case.* Further allowance to the wife. 1 Blackf. 360.

*The allowance of alimony may be made by a decree in favor of the wife for a gross sum, or for an annuity, which decree would give her an incontrovertible demand against

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PART II.

Wife entitled to dower, &c.

SECT. 57. Whenever a divorce shall be decreed on account of the misconduct of the husband, the wife shall be entitled to dower in his lands, in like manner as if he were dead.

Adultery of wife, husband shall hold her personal estate.

SECT. 58. When a divorce shall be decreed on account of the adultery of the wife, the husband shall hold her personal estate forever, and he shall also hold her real estate so long as they both live; and if there shall have been issue of such marriage born alive, he shall hold such real estate during his life as tenant by the curtesy; but in any case specified in this section the court, by their decree, may allow to the wife for her subsistence, as much of her said real and personal estate, or of the income thereof, as they shall judge reasonable.

And real estate as tenant by the curtesy.

Support of wife.

Trustees.

SECT. 59. The court shall have power to appoint a trustee or trustees, whenever the same shall be deemed expedient, to receive any sum or sums of money decreed to be paid to the wife upon trust to invest the same, and pay over the income, for the support and maintenance of the wife, or of the wife and minor children of the parties, or any of them, in such manner as the court shall direct, or to pay over to the wife the principal sum in such proportions, and at such times, as the court shall order, regard being had in all such cases to the situation and circumstances of such wife, and also the children, if there be any provided for in the decree, and such trustees shall give such bond with surety as the court shall require, for the faithful performance of their trusts. *

Discretionary powers of the court as to alimony, &c.

SECT. 60. The court shall in all cases, subordinate to the preceding provisions, regulate the division and distribution of the estate, real and personal, between the parties, and the allowance for alimony to the wife, or to her and the minor children committed to her care and custody, according to equity and good conscience, having always due regard to the legal and equitable rights of each party; but nothing contained in this article shall authorize the court to divest any party of their title to or interest in any real estate, further than is expressly specified herein.

Proviso as to divesting title to real estate.

Surety may be required.

SECT. 61. In all cases when alimony or other allowance, payable at any future time, is decreed for the wife and children, or any of them, the court may require sufficient sureties to be given for the payment thereof, according to the terms of the decree.

Care, &c. of children after decree.

SECT. 62. Upon the dissolution of a marriage by a sentence of nullity, or a decree of divorce, the court may make such decree for the care, custody, and maintenance of the minor children of the parties, and may determine with which of the

the husband, wherever he or his property might be found; or it may be made by giving her a sufficient part of her husband's property within the state. *Fischli* v. *Fischli*, 1 Blackf. 360

If a wife obtain a decree for a divorce and for a certain sum as alimony, the decree for the alimony is a lien on the real estate of the husband. *Frakes* v. *Brown*, 2 Blackf. 295.

* As to such trustees giving bond, see chapter 46, sections 83, 84.

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parents the children, or any of them, shall remain, as to the court shall seem proper and expedient, having due regard to the age and sex of such children; and from time to time, after the rendition of such decree, on the petition of either of the parents, the court may revise and alter such decree concerning the care, custody, and maintenance of the children, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children shall require.

Court may revise and alter decree. 1 Blackf. 360.

SECT. 63. After any decree for alimony or other allowance for the wife and minor children, or any of them, or after the appointment of trustees, as before provided, the court may, from time to time, on the petition of any of such parties, revise and alter their decree, respecting the amount of such alimony, or other allowance, and the mode or time of payment thereof, and also respecting the appropriation and payment of any principal sum, or the interest, or income arising therefrom, or from any other property; and may make such order or decree respecting the same as the situation and circumstances of the respective parties may justly require.

Course of proceedings, &c.

SECT. 64. The court shall, in all cases where the course of proceeding is not otherwise specially prescribed, hear and determine all matters coming within the purview of this article, according to the course of proceedings in chancery, and may issue process of attachment and of execution, and all other process necessary for the despatch and final determination of such causes. *

Default in payment of alimony, &c.—receiver to be appointed.

SECT. 65. Wherever any husband shall fail to pay the alimony, or other periodical allowance, decreed for the support and maintenance of the wife and children, or any of them, or shall fail to give surety for the payment thereof, when required so to do by the decree of the court, the court may appoint a receiver to take possession of his real and personal estate, and cause such personal estate, and the rents and profits of the real estate, so far as needed, to be applied towards such support and maintenance, as the court from time to time shall deem just and reasonable.

Proceedings when parties intermarry.

SECT. 66. When a decree of divorce has been granted, and the parties shall afterwards intermarry, the court, upon their joint application, and upon satisfactory proof of such marriage, may revoke all decrees and orders of divorce, alimony, and subsistence, which will not affect the rights of third persons.

Costs.

SECT. 67. The court shall make such order or decree respecting the payment of costs in any of the suits or proceedings provided for in this article, as to the court may seem just and reasonable.

Power of associate judges.

SECT. 68. The associate judges, in the absence of the president judge, shall have no power to render any sentence of nullity, or decree dissolving the marriage.

Duty of prosecuting attorney

SECT. 69. It is hereby made the duty of the prosecuting attorneys for the state of Indiana, within their several judicial

* *Smith* v. *Smith*, 4 Blackf. 132.

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circuits, to attend and oppose the granting of all divorces and sentences of nullity, before the circuit court, whether the defendant opposes the same or not; and such prosecuting attorney may show, at the hearing or trial of any such bill of complaint, any valid cause why such divorce should not be decreed, and may cause witnesses to be summoned to appear and testify at such hearing or trial, in like manner as in prosecutions in the name and by the authority of the state of Indiana.

Foreign divorces. 2 Kent, 106.

SECT. 70. A divorce decreed in any other state or country, according to the law of the place where the dissolution of the marriage was pronounced, by a court having jurisdiction of the cause, and of both of the parties, shall be valid and effectual in this state.

Effect of decree as to both parties.

SECT. 71. Whenever any decree of divorce is pronounced in this state by a court of competent authority, such decree shall fully and completely dissolve the marriage contract as to both parties.

Divorce a mensa et thoro.

SECT. 72. No divorce a mensa et thoro shall be granted by the courts of this state.

ARTICLE III.

Some general provisions respecting parents and children.

SECTION

73. Husband and wife living separate.
74. Court may award custody of children, &c.
75. Court may vary, modify, or annul order.
76. Penalty for secreting child, &c.
77. Mother may bind her bastard child.

Husband and wife living separate.

SECT. 73. When any husband and wife shall live separate and apart, without being divorced, and shall have any minor child or children of the marriage, either party, if an inhabitant of this state, may apply to the court having jurisdiction for a habeas corpus to have such minor child brought before it.

Court may award custody of children, &c.

SECT. 74. On the return of such writ, the court, on due consideration of the age and sex of such child or children, and the respective conditions and fitness of said parents, may award the charge and custody of the child or children so brought before it to either parent, under such regulations and restrictions, and with such provisions and directions as the case may require.

Court may vary order, &c.

SECT. 75. At any time after making such order, the court may annul, vary, or modify the same.

Penalty for secreting child, &c.

SECT. 76. If any parent or other person shall send or carry, or cause to be sent or carried, any such child out of this state, or shall secrete such child, or cause such child to be secreted, within this state, so that such writ of habeas corpus cannot be executed, the parent or person so offending shall, upon conviction thereof, on indictment in any court having jurisdiction, be fined in any sum not exceeding one hundred dollars, to which

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may be added imprisonment in the county jail not exceeding sixty days. ARTICLE 4.

SECT. 77. The mother of an illegitimate child shall have power to bind such child, during the lifetime of the putative father, as well as after his decease. Mother may bind her bastard child.

ARTICLE IV.

Of guardians and wards.

SECTION

78. Probate court may appoint guardians.
79. Case of a minor over or under fourteen years.
80. Minor failing to select guardian, court may appoint.
81. How choice by minor may be shown.
82. Bond of guardian.
83. His oath.
84. Power and duties of guardian.—Power restricted in case there be a father or mother, etc.
85. Testamentary guardians.
86. Their powers and duties specified.
87. Their bond.
88. Previous sections not to prevent the appointment of guardian ad litem, etc.
89. Guardian of insane person how appointed.
90. Power, etc., of such guardian.
91. Allowance of expenses, etc. to such guardian.
92. Inventory, account, etc., by guardian.
93. Appraisement and appraisers.
94. Guardian shall pay debts, etc.—Shall appear for his ward, etc.
95. Apply income and profits of the ward's estate.
96 May invest moneys, etc.
97. Petition by ward to invest estate, etc.
98. Guardian may be removed and another appointed.
99. Successor shall give bond and take oath.
100. Powers, etc., of such successor.
101. New or other bond may be required of guardian.

SECTION

102. Marriage of female ward and recovery of insane person.
103. Suit on bond of guardian.
104. Guardian of non-resident minor or insane person.
105. Powers, etc., of such guardian.
106. Shall give bond, etc.
107. Of payment of moneys, etc., to non-resident guardian.
108. Guardian's jurisdiction, etc.
109. Words "insane person" defined.
110. Real estate of ward may be sold.
111. Appraisers, etc.
112. Their oath.
113. Bond of guardian in such case.
114. Order of sale, etc.
115. Same.
116. Report of sale.
117. Confirmation of sale.
118. Estate may be sold at private sale. School lands, etc.
119. Part of estate may be sold.
120. Foreign guardian may sell real estate.
121. Bond of foreign guardian.
122. Who may oppose sale of the ward's estate.
123. Costs.
124. Circuit court; power as to estates of insane persons.
125. Jurisdiction of circuit courts, etc.
126. Partition with the assent of guardian.
127. Number of guardians.
128. Allowance, compensation, etc, of guardians.
129. Who may render an account.

SECT. 78. The probate court in each county, when it shall appear necessary or convenient, shall appoint guardians of minors, being inhabitants or residents of the county for which Probate court appoint guardians.

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such court is held, or who shall have any estate within such county. *

Minor under or over fourteen years.

SECT. 79. If the minor is under fourteen years of age, the court may nominate and appoint his or her guardian; but if the minor is above the age of fourteen years, such minor shall nominate his or her own guardian, and if a suitable person shall be nominated, he shall be appointed by the court.

Minor failing to select, court may appoint.

SECT. 80. If such minor shall fail to nominate a suitable person, the court may nominate and appoint a guardian in the same manner as if the minor were under the age of fourteen years.

How choice by minor may be shown.

SECT. 81. When any minor is over the age of fourteen years, the choice of a guardian by such minor may be shown to the court by the testimony of a competent witness, without requiring the personal attendance of the minor.

Bond of guardian.

SECT. 82. Every such guardian shall give bond, payable to the state of Indiana, in a penalty of double the probable amount of the estate of his ward which may come into his hands, with condition for the faithful performance of the duties of his said trust.

His oath.

SECT. 83. He shall also be sworn in open court to the faithful and honest discharge of the trusts and duties devolving on him as such guardian.

Power and duties of guardian.

SECT. 84. Every guardian appointed as aforesaid, shall have the custody and tuition of the minor, and the care and management of his estate until the minor shall attain the age of twenty-one years, or until the guardian shall be discharged according to law; but nothing herein contained shall be construed to prevent the father of the minor, if living, and, in case of his death, the mother, while she remains unmarried, from having the custody of the person of the minor and the care of his education, they respectively being suitable persons to have such care and custody.

Power restricted in case there be a father, &c.

Testamentary guardians.

SECT. 85. The father of every legitimate child which is a minor, may, by his last will, appoint a guardian or guardians of such minor, whether born at the time of making the will or afterwards, to continue during the minority of such child or for any less time.

Powers and duties.

SECT. 86. Such testamentary guardian shall have the same powers, shall perform the same duties with regard to the person and the estate of the ward, and shall be subject to the same liabilities, as a guardian appointed by the probate court.

* The relation of guardian and ward is nearly allied to that of parent and child. It applies to children during their minority, and may exist during the lives of the parents if the infant becomes vested with property; but it usually takes place on the death of the father, and the guardian is intended to supply his place. 2 Kent's Comm. 216.

The guardianship of minors and the adjustment of their accounts form a conspicuous branch of chancery jurisdiction. *Peck et al.* v. *Braman et al.*, 2 Blackf. 141.

An infant has a right to consider any person as his guardian, bailiff, or trustee, who enters upon his land and receives the proceeds, and may compel him to account for the same in a court of chancery. *Grimes et al.* v. *Wilson et ux.*, 4 Blackf. 331.

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ARTICLE 4.

Bond

SECT. 87. Every such testamentary guardian shall give bond in like manner and with like condition, as is before required of a guardian appointed by the probate court.

Guardian ad litem, &c.

SECT. 88. Nothing herein contained shall affect or impair the power of any court to appoint a guardian to defend the interests of any minor, impleaded in such court or interested in any suit or matter pending therein; or to allow any person, as the next friend of a minor, to commence and prosecute any suit in his or her behalf.

Guardian of insane person, how appointed.

See part III, chapter 46, article 9.

SECT. 89. Whenever it shall be represented to the probate or circuit court of the county of which any person is an inhabitant, by petition verified by affidavit, that such person is insane, the court shall cause him or her to be produced in court, and if, after a full hearing, it shall appear that such person is incapable of taking care of himself or property, by reason of such insanity, the court shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Power of such guardian.

SECT. 90. Every guardian so appointed for an insane person shall have the care and custody of his person and the management of his estate; and before entering on his duties he shall give bond and take an oath, as such guardian, in like manner as is required of the guardian of a minor.

Allowance of expenses to such guardian.

SECT. 91. When a guardian shall be appointed of any insane person it shall be the duty of the court to make an allowance, to be paid by the guardian, for all reasonable expenses incurred in defending the ward against the complaint of his insanity.

Inventory, account, &c.

SECT. 92. It shall be the duty of every guardian,

1. To make out a true inventory of all the estate, real and personal, of his ward, and file the same in the office of the clerk of the proper court within one year after his appointment, or after such estate shall come to his knowledge.

2. To dispose of and manage such estate according to law and for the best interest of the ward; and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody, and education of the ward.

3. To render an account, on oath, of the property, estate, and moneys of the ward in his hands, and all incomes or interest derived therefrom, and of the management and disposition of the same at such times as the proper court shall order and direct.

Settlement of accounts.

4. At the expiration of his trust to settle his accounts with the proper court, or with the ward if he be of full age, or his legal representatives; and to pay over and deliver all the estate, moneys, and effects remaining in his hands or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto. *

* The general rule is, in case of a guardianship, that the ward must be of age before he can require his guardian to account; yet, in chancery, a ward may call such guardian to account if any thing should occur which makes it necessary. An infant after his guardian's death, has a right to compel a settlement of his accounts as if he

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Appraisement and appraisers.

SECT. 93. Upon the taking of any inventory of goods or chattels, required by this article, the property comprised therein shall be appraised in like manner as is required with respect to the inventory of the estate of a testator or intestate; and whenever the guardian shall dispose of any of the personal estate of his ward, he shall return a statement of sales and account therefor in like manner as if he were an executor or administrator.

Guardian shall pay debts, &c.

SECT. 94. Every guardian appointed under the provisions of this article, whether for a minor or any other person, shall pay all just debts due from the ward out of his personal estate, if sufficient; and if not sufficient, then out of his real estate on the sale thereof, as hereinafter provided: he shall also settle all accounts of the ward, and demand, sue for, and receive all debts due to him; or may with the approbation of the proper court, compound for the same, and give a discharge to the debtor upon receiving a fair and just dividend from the estate of such debtor; and he shall appear for, and represent his ward in all suits and proceedings, unless where another person is appointed for that purpose by the court as guardian ad litem or next friend.

Appear for his ward.

Apply income and profits.

SECT. 95. Every guardian shall manage the estate of his ward frugally and without waste, and apply the income and profits thereof, so far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if he have any.

May invest moneys, &c.

SECT. 96. The proper court, on the application of a guardian, or of any other person of kin to the ward, notice of such latter application being given to the guardian, may authorize or require the guardian to sell and transfer any moneys invested in any company, public funds, or bank stock, or any other personal effects, held by him as guardian of such ward, and to invest the proceeds, or any other moneys he may have in his hands in real estate or in any other manner that shall be most for the interest of all concerned therein; and the said court may, at any time, give such directions and make such orders as the case may require, for managing, investing, and disposing of the estate and effects in the hands of the guardian.

Petition by ward to invest estate, &c.

SECT. 97. Where any minor, by his next friend, shall allege by petition to the proper court, that his guardian has not disposed of the property or estate of such ward in such manner as will conduce to his interest; or that such guardian has made use of such property or estate for his own benefit; or that such guardian has failed and delayed to make an investment of such property or estate in land or otherwise to the injury of said ward; the court shall thereupon compel such guardian to account for the property and estate of such ward in his hands at such time as the court shall order and direct; and the court, in any such

were of age, the guardian's trust being personal and terminating at his death. *Peck et al.* v. *Braman et al*, 2 Blackf. 141.

See chapter 39, sections 37, 38, 39.

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case, may order any such guardian to invest the estate of the ward in land, or to make such other investment or disposition thereof as to the court may seem best and most expedient, or said court may remove such guardian and appoint another in his stead.

Guardian may be removed, and another appointed.

SECT. 98. When any guardian shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, or by improvidence or mismanagement is likely to endanger his sureties, such guardian, having first five days' notice thereof, may be removed from his said trust by the court, on the application of any person interested in such estate, or of his sureties, and another guardian appointed in his stead.

Successor shall give bond and take oath.

SECT. 99. Every guardian appointed in the place of another shall give bond and take an oath as such guardian, in like manner as the original guardian, and shall do and perform all the duties of such trust.

Powers of such successor.

SECT. 100. Any guardian appointed in the stead of any guardian who has resigned, died, or been removed, shall have power as such to sue for, demand, and receive of all persons legally or equitably liable, all moneys, property, rights, effects, and things in action belonging to such ward, or held by the previous guardian for such ward.

New bond, &c. maybe required of guardian. Ante page 508.

SECT. 101. The court may also require any guardian to give a new bond, and may discharge the existing sureties from future responsibility, in the like cases, and upon the like terms and conditions as are prescribed in the fifth article of the thirtieth chapter of these Revised Statutes.

Marriage of female ward and recovery of insane person.

SECT. 102. The marriage of any female, under guardianship as a minor, to any person of full age, shall operate as a legal discharge of her guardianship, in like manner as if she had arrived at full age; and every guardian of an insane person may be discharged from his trust by the court, when it shall appear, on the application of the ward, or otherwise, that such guardianship is no longer necessary.

Suit on bond. See chap. 30, art. 15, p. 556.

SECT. 103. Any bond given by a guardian may be put in suit by the ward or any other person entitled to the estate; and the suit in such cases shall be conducted in like manner as is provided with respect to suits on the bonds of executors and administrators.

Guardian of non-resident minor or insane person.

SECT. 104. When any minor or insane person residing without this state, shall have any property in this state, any friend of such person, or any one interested in the estate in expectancy, or otherwise, may apply to the judge of the proper court in any county in which any of such estate is; and if it shall to the court appear proper and expedient, a guardian of the estate of such absent minor or insane person may be appointed.

Power of such guardian.

SECT. 105. Every guardian thus appointed shall have the like power over the estate of the ward, and shall perform the same duties respecting the same, except that he shall have no power to sell the real estate of such ward, by any order or decree of the court, or otherwise.

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Shall give bond, &c.

SECT. 106. The guardian appointed under the provisions of the two preceding sections, shall give bond and surety and take an oath as such guardian, in like manner as is required of guardians of minors residents of this state.

Payment of moneys, &c. to non-resident guardians.

SECT. 107. The court having jurisdiction shall make such order respecting the delivery and payment of property and moneys to the non-resident guardians of non-resident wards as to the court may seem just and right.

Guardianship first granted, &c.

SECT. 108. Every guardianship which shall be first lawfully granted shall extend to all the estate of the ward within this state, and shall exclude the jurisdiction of the court of every other county.

Words 'insane person' defined.

SECT. 109. The words "insane person," as contained in this article, are intended to include every idiot, non-compos, lunatic, and distracted person; and these words shall be so construed in the provisions relating to guardians and wards, contained in this or any other statute of this state.

Real estate may be sold.

SECT. 110. Whenever it shall appear to be necessary for the education of any minor, or for the sustenance of any minor, insane person, or the family of either, that the real estate of such minor or insane person should be sold, or if it should be made to appear to such court that such real estate is suffering unavoidable waste, decay, or injury, or that the value of such real estate can be invested in other property to the manifest advancement of the estate and interest of such minor or insane person, or that such real estate is encumbered by a lien or held by an equitable title only, a part of the purchase money being unpaid, and that the personal estate is insufficient to pay the same, or if sufficient that it would not be for the benefit of those interested that it should be thus applied, the court, on the application of the guardian, may order the sale of such real estate, or so much thereof as, in the opinion of the court, it would be proper to sell.

Appraisers.

SECT. 111. Upon such application being filed in writing, verified by the oath of the guardian, the court, if satisfied with the propriety of selling such real estate, shall appoint two discreet persons, freeholders of the county, to appraise said real estate.

Their oath.

SECT. 112. Said appraisers shall take an oath to truly and impartially appraise said premises at their fair cash value; which oath shall be endorsed on the certificate of their appointment.

Bond of guardian.

SECT. 113. Upon the appraisement of said real estate being returned and filed in writing, signed by said appraisers, the court shall require such guardian to execute bond, with sufficient freehold sureties, payable to the state of Indiana, in double the sum of the appraised value of such real estate, with condition for the faithful discharge of his duties, and the just and faithful application, payment, and accounting for, of all moneys arising from such sale, under the order and direction of the court, according to law.

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ARTICLE 4.

SECT. 114. Upon such bond being filed and approved by the court, the court shall order the sale of such real estate, providing in the order for reasonable notice of such sale, the credits to be given for the payment of the purchase money, and the mode of securing the same. Order of sale.

SECT. 115. The court may empower such guardian to make sale of such real estate, or may appoint a commissioner or commissioners for that purpose. Same.

SECT. 116. At the term of the court next after such sale, such guardian or commissioner shall make report thereof to such court, and produce the proceeds of such sale, and the notes or obligations, or other securities taken to secure the payment of the purchase money. Report of sale.

SECT. 117. The court, in confirming such sale and directing a conveyance, shall be governed by the two hundred and thirty-eighth, two hundred and fortieth, two hundred and forty-first, two hundred and forty-second, two hundred and forty-third, and two hundred and forty-fourth sections of the thirtieth chapter of these Revised Statutes. Confirmation of sale. Ante page 530.

SECT. 118. Any real estate of such ward may be sold by the guardian at private sale by order of the court, on such terms as the court shall direct; but it shall not be sold for less than the appraised value thereof; and where any of such real estate is held upon a certificate of purchase from a school commissioner, or other public certificate, or on a contract for the purchase thereof, the same may be sold by such guardian in the manner prescribed in the two hundred and fiftieth, one hundred and seventy-seventh, one hundred and seventy-eighth, one hundred and seventy-ninth, one hundred and eightieth, and one hundred and eighty-first sections of the thirtieth chapter of these Revised Statutes. Estate may be sold at private sale. School lands, &c. Ante p. 533,519

SECT. 119. When it is necessary to sell a part of the real estate of any ward, and by such partial sale the residue of the estate, or some specific part thereof, would be greatly injured, the court may authorize the sale of the whole of the estate, or such part thereof as the court shall deem most for the interest of all concerned. Partial sale.

SECT. 120. When any minor or other person shall be under guardianship without this state, and shall have no guardian in this state empowered to sell his real estate, the foreign guardian may file an authenticated copy of his appointment as guardian, in the proper court for any county in which there may be real estate of his ward; after which he may proceed to sell the real estate of his ward in this state, as if he were a resident guardian appointed in this state, and upon the same terms and conditions, and subject to the same law and regulations, except as provided in the next section. Foreign guardian may sell real estate.

SECT. 121. When it shall appear to the court in this state that such foreign guardian is bound with sufficient sureties, in the state or country where he was appointed, to account for the proceeds of such sale, and an authenticated copy of such Bond of foreign guardian.

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bond shall be filed in such court, no further bond shall be filed here; otherwise he shall give bond as in the case of sales by a guardian appointed in this state.

Who may oppose sale.

SECT. 122. All those who are next of kin, and heirs apparent of any ward, shall be considered as interested in any real estate proposed to be sold, and may appear as such, and answer to or resist the petition of the guardian; and the court in its discretion may require all such persons to be notified of the pendency of such petition before ordering such sale.

Costs.

SECT. 123. If any person entitled so to do shall appear and object to granting the sale of any real estate prayed for by a guardian, and the court shall refuse such sale, on the ground that the petition was unreasonable, or shall grant the prayer of the petition when thus resisted, such court in its discretion may award costs in favor of the party prevailing in the case.

Circuit courts.

SECT. 124. All the powers herein conferred on the probate court as to insane persons and their estates, are hereby granted to the circuit courts of this state.

Jurisdiction of circuit courts.

SECT. 125. Whenever the guardian of any insane person shall have been appointed by the circuit court of any county, such circuit court shall have exclusive jurisdiction of the trusts, duties, sale of the estate, and every thing pertaining to the person and estate of such ward, the sale of his real and personal estate, and requiring such guardian to give bond, and account for and settle his said trust, as are by law conferred on the probate court respecting the same matters.

Partition with the assent of guardian.

SECT. 126. The guardian of any minor may join in and assent to a partition of the real estate of the ward, under the direction of the court, either upon a petition for partition or otherwise; and he may also assign and set out dower in said estate to any widow entitled thereto.

Number of guardians.

SECT. 127. The court, in its discretion, whenever the same shall appear necessary, may appoint more than one guardian of any person subject to guardianship, who shall give bond, and be governed and liable in all respects as is provided respecting a sole guardian.

Allowance to guardians.

SECT. 128. Every guardian shall be allowed by the court settling his accounts, the amount of all his reasonable expenses, incurred in the execution of his trust, and also such compensation for his services as the court shall deem reasonable, but such compensation for services shall not be made or allowed until the close of such guardianship.

Who may render an account.

SECT. 129. When an account is rendered by two or more joint guardians, the court in its discretion may allow the same upon the oath of any one of them.

NOTE.—The guardian's trust is one of obligation and duty, and not of speculation and profit. He cannot reap any benefit from the use of the ward's money. He cannot act for his own benefit in any contract, or purchase, or sale, as to the subject of the trust. If he settles a debt upon beneficial terms, or purchases it at a discount, the advantage is to accrue entirely to the infant's benefit. 2 Kent's Comm. 229.

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ARTICLE V.

Of masters and apprentices.

SECTION

130. Who may be bound.
131. Children under 14 years, how bound.
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133. By indenture.
134. Minor over fourteen years, &c. may bind himself in presence of the probate judge.
135. Overseers of the poor may bind.
136. Parent shall be summoned, &c.
137. Indenture of two parts.
138. Shall be acknowledged.
139. Record, &c. shall be evidence, &c.
140. Penalty against recorder for failing to record.
141. Certain agreements shall be contained in the indenture.
142. Last section qualified.
143. Consideration, &c. to be for the benefit of the apprentice.
144. Parents, &c. to inquire into treatment.
145. For ill treatment, &c. complaint may be made before justice of the peace.
146. Master, &c. may be summoned.
147. Venire.
148. Verdict.
149. Judgment.
150. Discharge of apprentice.
151. Proceedings, &c. if master fail to appear.
152. Judgment in favor of the master, &c.
153. Dissolute apprentice, &c.
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155. Costs.
156. If apprentice run away, how proceeded against.
157. Apprentice may be committed.
158. Master may have a warrant to convey apprentice to his residence.
159. Cases in which the parent, &c. shall be liable for costs.
160. Liability of the apprentice for costs.
161 Apprentice shall return lost time.
162. Appeal to circuit court.
163. How tried.
164. Fees of justices of the peace, witnesses, and jurors.
165. Apprentice discharged by court, &c. shall receive a certificate.
166. Contracts of service, &c. by apprentice void.
167. Penalties against persons enticing away apprentices.
168. For concealing apprentice.
169. Actions against apprentices.
170. How far parent, &c. liable on indenture.
171. Action against the master, &c.
172. Such suit may be brought at any time.
173. Death pending such action.
174. Limitation of actions.
175. Discharge of apprentice.
176. If discharged, may be bound anew.
177. Effect of death of master, &c.
178. Provision as to common law contracts, &c.

Who may be bound.

SECT. 130. All children may be bound as apprentices to serve as such in any trade, craft, art, or employment: if a male, to the age of twenty-one years, and if a female, to the age of eighteen years, or to the time of her marriage within that age; or such binding may be for any less period than to the age above specified.

Children under 14 years, how bound. 4 Blackf. 337.

SECT. 131. Children under fourteen years of age may be bound by their father, or in case of his death, or incompetency, by their mother, if there be no legal guardian; but if there be such guardian, they may be bound by him, and if illegitimate, they may be bound by their mother.

Over 14 years.

SECT. 132. Minors above the age of fourteen years may be bound as aforesaid, if when they are bound, the consent of the minor shall be expressed in the indenture, and testified by his or her signing the same.

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By indenture. 3 Blackf. 61.

SECT. 133. No minor shall be bound as aforesaid, unless by an indenture, signed and sealed by all the parties; and the same may be executed in two parts, one to be kept by the parent or guardian for the use and benefit of the apprentice, and the other by the master or mistress.

Minor may be bound in presence of probate judge.

SECT. 134. Any minor over the age of fourteen years, who has no parent or guardian competent to act, may bind himself or herself as an apprentice, as above provided, by an indenture, signed and sealed by such minor, and the master or mistress, if such binding be done in the presence of the probate judge of the county, and with his consent and approbation, testified by his endorsement on the indenture.

Overseers of the poor may bind.

SECT. 135. The overseers of the poor within their respective townships, may bind as apprentices, the minor children of any poor person, who has become chargeable as a pauper within their township, or who is supported there, in whole or in part, at the charge of the county; and also all minor children whose parents have abandoned them, or have unreasonably neglected, or are unable to provide for them; and also all minor children who are or must become a county charge, such minor children in all cases having a lawful settlement in such township.

Parent shall be summoned.

SECT. 136. But the overseers of the poor shall not be authorized to bind as apprentice any minor whose parent or guardian shall reside in the same county, and object thereto, until such parent or guardian shall have been summoned to appear before the probate court of the county, and show cause, if any he have, why such minor should not thus be bound; and if no sufficient cause be shown to the contrary, such court shall order the overseers of the poor to bind out such minor as in this article provided.

Indenture of two parts.

SECT. 137. No minor shall be bound by the overseers of the poor, unless by an indenture of two parts, sealed and delivered by the overseers of the poor and the master or mistress, one part to be kept by such master or mistress, and the other to be deposited with and kept by the overseers of the poor.

Shall be acknowledged and recorded.

SECT. 138. Every indenture of apprenticeship shall be acknowledged before some person authorized to take the acknowledgment of deeds of conveyance, and shall, within ninety days thereafter, be recorded by the recorder of the county in which the master or mistress resides, in a book provided for that purpose, for which such recorder shall receive a fee of fifty cents.

Record, &c. shall be evidence.

SECT. 139. The record of such indenture made by such recorder, and any copy thereof duly certified by him may be declared on, and received in evidence in all courts in this state, in like manner as the original indenture.

Penalty for failing to record.

SECT. 140. For every failure to record any such indenture as required above, such recorder, upon conviction thereof on indictment, shall be fined in any sum not exceeding one hundred dollars.

Certain agreements for in-

SECT. 141. Every indenture of apprenticeship specified in this article, shall contain an agreement on the part of the mas-

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ter or mistress, that they shall cause such apprentice to be taught to read and write, and to be instructed in the general rules of arithmetic, at least to the double rule of three inclusive; and it may be agreed by such indenture for such other instruction, benefit, and allowance to such apprentice, either within or at the end of the term, as the parties may think just and reasonable. ARTICLE 5. struction shall be contained in the indenture.

SECT. 142. When any parent or guardian shall bind any minor for less than three years, they may make any agreement they shall deem right, in reference to the instruction of such minor, irrespective of the provisions of the last preceding section. Last section qualified.

SECT. 143. All considerations of money, or other things, paid or allowed by the master or mistress upon any contract of apprenticeship made pursuant to the provisions of this article, shall be paid or secured to the sole use and benefit of the minor thereby bound. Considerations to be for the benefit of the apprentice.

SECT. 144. All persons shall inquire into the treatment of apprentices bound by them respectively, or with their consent or approbation, or who shall have been bound by their predecessors in office, and defend them from all cruelty, neglect, and breach of contract, on the part of their masters or mistresses. Parents, &c. inquire into treatment.

SECT. 145. In case any apprentice shall be grossly misused, ill treated, or neglected, by his master or mistress, or by any person under the direction, or by the permission of such master or mistress, such apprentice, by his next friend, or any person on his behalf, may complain against such master or mistress before any justice of the peace of the township, not of kin to any of the parties, setting forth in writing the cause or causes of complaint, and verifying the same by affidavit. For ill treatment, complaint before justice of the peace.

SECT. 146. Such justice of the peace shall forthwith summon such master or mistress to appear before him to answer said complaint; and if he can reconcile the parties to each other, he shall at their request dismiss such complaint on such terms as the equity and justice of the case may require. Master, &c. may be summoned.

SECT. 147. If the justice shall be unable to settle and reconcile the differences and matters in dispute, he shall issue a venire to a constable of his township, to summon five disinterested householders of such township, to be named in such venire by said justice, to meet at a time and place, not less than three nor more than five days thereafter; and said persons, or in case any of them cannot be notified, or shall fail to appear, such other person or persons as the justice shall direct to be summoned in their stead, shall be sworn by such justice, to hear and determine the complaint aforesaid. Venire.

SECT. 148. If, after hearing the proofs and allegations of the parties, they find such master or mistress guilty of any gross misusage, ill treatment, or neglect, as above specified in this article, they shall render their verdict in writing accordingly. Verdict.

SECT. 149. Such justice shall enter such verdict on his docket, and render judgment against the master or mistress for Judgment.

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the costs of such proceeding and trial, and issue execution thereon to collect the same.

Discharge of apprentice.

SECT. 150. From and after the rendition of such judgment, the said apprentice shall be discharged from his apprenticeship, and shall no longer be liable to render service to his master or mistress.

If master, &c., fail to appear.

SECT. 151. If the master or mistress, when duly summoned to appear, shall fail to attend, said complaint may be heard and determined in his or her absence, as if he or she were present, and the same proceedings therein had, and verdict and judgment be rendered, with like force and effect.

Judgment in favor of the master, &c.

SECT. 152. If the persons sworn to try said complaint shall find the master or mistress not guilty, the justice shall render judgment against the next friend or other person by whom said complaint was preferred; unless such justice shall be of opinion that such complaint was made upon reasonable or probable cause, in which case each party shall pay his own costs.

Dissolute apprentice, &c.

SECT. 153. When any apprentice shall become immoral or dissolute in his habits, in disregard of the authority and instruction of the master or mistress, exerted for the reformation of such apprentice, such master or mistress may complain before any disinterested justice of the peace of the township, not of kin to any of the parties, who shall cause notice of such complaint to be given to the parent or guardian of such apprentice or other person or persons by whom he was bound to such master or mistress.

Proceedings.

SECT. 154. The same proceedings shall be had, as to summoning and swearing five householders to hear and try such complaint; and if, upon the investigation thereof, such persons shall be of the opinion that such master or mistress should be discharged from all further duties and care respecting such apprentice, they shall declare the same in writing, under their hands, to such justice, who shall enter the same on his docket, and thereupon the said indenture, as to the future service of such apprentice shall be void, and shall not be enforced against such master or mistress.

Costs.

SECT. 155. If the master or mistress shall fail to establish such complaint, costs shall be awarded against him or her, and execution issue therefor as in other cases.

If apprentice run away, how proceeded against.

SECT. 156. If any apprentice shall unlawfully depart from the service of his or her master or mistress and shall refuse to return, any justice of the peace of any county where such apprentice may be found, on complaint made to him on the oath of such master or mistress, or by any other person of full age, may issue his warrant to any constable of his township, to apprehend such apprentice and bring him before the said justice; and if the complaint shall be sustained, the justice may order the offender to return to the service of his or her master or mistress.

Apprentice may be committed.

SECT. 157. If such apprentice shall refuse to return to the service of his master, such justice shall commit him or her to

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ARTICLE 5.

the jail of the county, there to remain not exceeding twenty days, unless sooner discharged by his or her master or mistress.

Master, &c., may have a warrant to convey apprentice his residence.

SECT. 158. If the master or mistress desire it, the justice, instead of committing such apprentice to jail as above provided, may, by his warrant, empower such master or mistress to convey him to the residence of such master or mistress, although it may be to some other county in this state than the one in which such justice resides.

When the parent, &c., shall be liable for costs.

SECT. 159. If such justice award the return or commitment of such apprentice, the costs shall be taxed against such master or mistress and paid by him or her; and if the parent or guardian of such apprentice, by whom such apprentice was bound is living, such parent shall be liable to pay the said costs to the master or mistress, in an action brought on such indenture, at any time after such costs shall have accrued.

Liability of the apprentice for costs.

SECT. 160. If such apprentice were not bound by a parent or guardian, or if such costs shall not have been before collected by the master or mistress, he or she may recover the same of said apprentice, in an action of assumpsit, when he shall arrive at full age.

Apprentice shall return lost time.

SECT. 161. All time wilfully or unlawfully lost from the service of his or her master, by any apprentice, shall be returned by him or her, day for day, immediately at the expiration of the apprenticeship; and if such apprentice refuse thus to return the same, he or she shall be liable for damages therefor, to be recovered in an action of assumpsit in any court of competent jurisdiction; but no action shall be maintained as provided in this and the preceding section unless the same is brought within three years after the expiration of such apprenticeship.

Appeal to circuit court.

SECT. 162. Any next friend or person filing any complaint specified in this article, against any master or mistress, and such master or mistress, as defendant to any such complaint, or having filed any complaint as above provided, or instituted proceedings to compel the return of any apprentice to his or her service, and in any of the foregoing cases such apprentice may appeal from the judgment of the justice of the peace, in any of the foregoing proceedings, to the circuit court of the proper county, in like manner and under the same regulations and restrictions as civil causes are appealed from the decision of a justice of the peace.

How tried.

SECT. 163. Such circuit court shall hear and determine such appeal in a summary manner, and the decision of the court shall be final between the parties.

Fees of justices of the peace, witnesses, and jurors.

SECT. 164. The justice of the peace and persons trying any complaint above specified, and the witnesses examined thereon, shall respectively receive the same fees as are allowed to justices of the peace and jurors and witnesses before justices of the peace.

Apprentice discharged by court, &c., shall have a certificate.

SECT. 165. Whenever any apprentice shall be discharged from his apprenticeship, either upon proceedings before a justice of the peace, or on an appeal to the circuit court, such justice,

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or the clerk of the circuit court, shall give such apprentice a certificate under his hand and seal, setting forth the fact of such discharge, and the same in all courts and proceedings at law shall be presumptive evidence of such discharge.

Contracts of service, &c., by apprentice, void.

SECT. 166. Every contract for service and voluntary enlistment, entered into by any minor during the period of his or her apprenticeship shall be deemed null and void.

Penalty against persons enticing away apprentices.

SECT. 167. Every person who shall counsel, hire, entice, aid, persuade, or assist any apprentice to run away, or unlawfully absent himself or herself from his or her master, shall forfeit and pay a sum not exceeding one hundred dollars and costs of suit, to such master or mistress, to be sued for in an action of debt before any court having cognizance thereof.

For concealing apprentice.

SECT. 168. Every person who shall harbor, entertain, or conceal any apprentice knowing such apprentice to have unluwfully departed from the service of his or her master or mistress, shall forfeit and pay to such master or mistress, such damages and costs of suit as may be assessed in any court having cognizance thereof.

Action against apprentice.

SECT. 169. If any apprentice shall unlawfully depart from the service of his or her master or mistress, so that such master or mistress shall be deprived of his or her services during the remainder of the term of service, or any part thereof, such master or mistress may bring and maintain an action on the case, in any court having cognizance thereof, against such apprentice, for such damage as the master or mistress may have sustained thereby.

How far parent, &c. liable. 3 Blackf. 61.

SECT. 170. No parent, guardian, or trustee shall be liable on any covenant contained in any indenture by which any minor is bound to service as an apprentice, unless the same shall contain an express covenant therein by which such parent, guardian, or trustee is made individually liable.

Action against the master, &c.

SECT. 171. Every master, whether any complaint, as prescribed in this chapter, shall have been filed and prosecuted or not, shall be liable to an action on the indenture for the breach of any covenant on his part therein contained; and all damages recovered in such action, after deducting the necessary charges in prosecuting the same, shall be the property of such apprentice, and may be applied and appropriated to his or her use by the person who shall recover the same; and the residue, if any, shall be paid to the minor, if a male, at his age of twenty-one years; and if a female, at her age of eighteen years, or at the time of her marriage within that age.

Such suit may be brought at any time.

SECT. 172. Such action may be brought at any time after the breach of covenant complained of, either by the parent, or his executors or administrators, or by the guardian, or by any one who may succeed him in that trust, or by the overseers of the poor, or their successors in office, or by the apprentice by his guardian or next friend; or if not brought until he or she arrive at full age, it may be brought by such apprentice in his or her own name.

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ARTICLE 5.

Death pending action.

SECT. 173. If during the pendency of any such action, except in the case of the death of such apprentice, the plaintiff or plaintiffs, or any of them, shall die or be succeeded in their office or trust, such suit shall not abate thereby, but shall proceed in the name of their executors, administrators, or successors, as the case may require; and the sum or sums recovered shall be disposed of as if such death or succession had not occurred.

Action limited.

SECT. 174. No such action shall be commenced after two years from the expiration of the term of service of the apprentice.

Discharge of apprentice.

SECT. 175. If recovery in any such action shall be had against the master or mistress, the court may, upon motion of the plaintiff, discharge such apprentice from his apprenticeship, if it shall appear to the court just and proper so to do.

If discharged, may be bound anew.

SECT. 176. In every case specified in this article, in which a minor is discharged from his or her apprenticeship by due course of law, such minor may be bound out anew.

Effect of death of master, &c.

SECT. 177. No indenture of apprenticeship, made in pursuance of this article, shall bind the minor after the death of the person to whom he or she was bound, but such apprenticeship shall be thenceforth discharged, and the minor may be bound out anew.

Provision as to common law contracts, &c.

SECT. 178. Nothing contained in this article shall prevent or affect the right of a parent by the common law, to make any contract or agreement for the labor or services of his child during its minority, not constituting a binding as an apprentice within the meaning and effect of this article.

THOMAS J. HENLEY,
Speaker of the House of Representatives.
THOMAS D. WALPOLE,
President, pro tem., of the Senate.

APPROVED FEBRUARY 11, 1843.

SAM. BIGGER.

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PART III.

AN ACT CONCERNING COURTS AND THEIR OFFICERS, AND ACTIONS AND PROCEEDINGS IN CIVIL CASES.

WHEREAS, it is expedient that the several statutes of this state relating to courts and their officers, and actions and proceedings in civil cases, should be revised and arranged under appropriate heads, and that omissions and other defects should be supplied:

THEREFORE,

BE it enacted by the general assembly of the state of Indiana as follows:

CHAPTER 36.

GENERAL PROVISIONS CONCERNING COURTS OF JUSTICE, AND THE POWERS AND DUTIES OF JUDICIAL OFFICERS.

SECTION
1. Sittings of courts shall be public.
2. Judge who is a party, &c. to a suit, not to sit.
3. Judge of appellate court.
4. Judge who was attorney, &c. not to sit, &c.
5. Judge, if a party, may appear, &c.
6. Court not to sit on Sunday, except, &c.
7. Effect of impression of seal of court.
8. Courts of record; their powers.
9. When process, cause, &c. not to be discontinued.
10. Omission to adjourn.
11. New seal.
12. Writs, &c. to be sealed, &c. when returnable.
13. Same.

SECTION
14. Attorney's name to be endorsed on writ.
15. Power of courts to punish for contempts.
16. Mode of proceeding in case of contempt.
17. Person fined for contempt may show such fine, &c., if indicted.
18. Drawing up and signing minutes of proceedings.
19. Place of holding courts.
20. Court may adjourn in case of sickness.
21. Clerk shall publish the same.
22. Effect of such adjournment.
23. Failure of court to convene shall not affect causes.

Sittings of courts public.

SECTION 1. The sittings of every court within this state shall be public, and every citizen who shall well conduct himself may freely attend the same.

Judge who is a party, &c not to sit.

SECT. 2. No judge of any court shall sit as such in any cause to which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of consanguinity or affinity to either of the parties.

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SECT. 3. No judge of any appellate court, or of a court to which a writ of error is returnable, shall decide or take part in the decision of any cause or matter which shall have been determined by him when sitting as a judge of any other court. Judge of appellate court.

SECT. 4. No judge shall practice or act as a counsellor, attorney, or solicitor in any of the courts of this state, nor shall he be allowed to have a partner practising in any of said courts, nor shall he become either directly or indirectly interested in the costs of any suit which may be brought into the court of which he may be a judge. Judge who was attorney, &c., not to sit.

SECT. 5. In all cases in which a judge may become a party, or may have an interest in the subject matter of the suit, he may appear by himself, or by attorney, as is permitted to all other persons suing or being sued in such court. Judge, if a party, may appear, &c.

SECT. 6. No court shall be open or transact any business on Sunday, unless it be for the purpose of receiving a verdict or discharging a jury, and no adjournment of the court shall be to that day, except such adjournment shall be made after committing a cause to a jury for the purpose of receiving the verdict or discharging such jury.* Court not to sit on Sunday.

SECT. 7. The impression of the seal of any court by stamp on the paper or parchment shall be a sufficient sealing. Seal.

SECT. 8. The supreme court, and the circuit courts and probate courts of the several counties, are courts of record, and shall have power respectively, Courts of record; their powers.

1. To issue process of subpœna requiring the attendance of any witness residing or being in any part of this state, to testify in any matter or cause pending in such court.

2. To administer oaths to witnesses in any such matter or cause, and in all other cases where it may be necessary in the exercise of the powers and duties of such court.

3. To devise such new writs and forms of proceedings as may be necessary to carry into effect the powers and jurisdiction possessed by such court.

SECT. 9. No process issued or proceeding pending in any of said courts, shall be discontinued by reason of such court not having been held at any stated term thereof; but such process shall be deemed to be returnable to the term which shall be held next after such failure, and the proceedings shall stand continued to, and be disposed of, at such next term, in the same manner in which they might have been at the term which failed. When cause shall not be discontinued.

SECT. 10. No omission to adjourn any such court from day to day, previous to the final adjournment thereof, without day, shall vitiate any proceedings in such court. Omission to adjourn.

SECT. 11. Whenever the seal of any such court shall be so injured that it cannot be conveniently used, the court shall cause the same to be destroyed; and whenever the seal shall be lost or destroyed, such court shall cause a new seal to be made, New seal.

*Sunday is dies non juridicus, and by the common law all judicial proceedings which take place on that day are void. Our statutes have made some exceptions to this rule. *Chapman* v. *State, ex rel. Conerley*, 5 Blackf. 111.

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PART III.

similar in all respects to the former seal, which shall become the seal of the court, and the expense thereof shall be paid by the county in which such court shall be held, except the seal of the supreme court, which shall be paid from the state treasury.

Writs, &c. shall be sealed, &c.

SECT. 12. All writs and process shall issue out of the court to which they are returnable, and, except the process of subpœna for witnesses, shall be sealed with the seal of said court, and all such writs and process shall be tested in the name of the proper clerk of such court, and returnable on the first day of the term next ensuing, unless otherwise directed or allowed by law.*

When returnable.

Same.

SECT. 13. All process returnable at a day fixed by law, shall be deemed and taken to be returnable at such day, although a different day may be named in said process.

Attorney's name on writ.

SECT. 14. All writs and process issued out of any court of record, shall, before the same shall be delivered to any officer to be executed, have the name of the attorney or other person at whose instance the same shall have been issued, endorsed thereon by the clerk of the court.

Power of courts to punish for contempts.

SECT. 15. Every court of record shall have power to punish by fine and imprisonment, or by either, as for a criminal contempt, persons guilty of any of the following acts:

1. Disorderly, contemptuous, or insolent behavior towards the court, or any of its officers, in its presence.

2. Any breach of the peace, noise, or other disturbance tending to interrupt its proceedings.

3. Wilful disobedience of, or resistance wilfully offered to, any lawful process or order of said court.

4. Any wilful attempt to obstruct the proceedings or hinder the due administration of justice in any suit, proceeding, or process pending before the court.

5. The contumacious and unlawful refusal of any person to be sworn or affirmed as a witness; and when sworn or affirmed, the refusal to answer any legal and proper interrogatory.

Mode of proceeding in case of contempt.

SECT. 16. Contempts committed in the presence of the court may be punished summarily: in other cases the party, upon

* As to the style of process, see the constitution, ante p. 54, sect. 11.

A writ commenced, "The state of Indiana, Allen county, ss: To *William Brown*, constable of *Adams* township, greeting." *Held*, That no objection could be made to the warrant on account of its not repeating, in the mandatory part of it, the name of the state. *Cooper* v. *Adams*, et al., 2 Blackf. 294. See also, *Webster* v. *Furley*, 6 Blackf. 163.

If a capias ad respondendum concluding with the words, "witness *A B*, clerk of the —— circuit court," &c. be in every respect formal, except that it have not the clerk's signature at the close of the teste, it is sufficient under the statute. *Wibright* v. *Wise*, 4 Blackf. 137.

The motion of a defendant to set aside a capias ad respondendum must be made as early after the return of the writ as is convenient and practicable, according to the rules of the court, and before he has taken any step in defence of the suit. *Wibright* v. *Wise*, 4 Blackf. 137 See also, *Shirley* v. *Hagar*, 3 Blackf. 225. *Jones, et al.*, v. *Martin*, 5 Blackf. 278.

Oyer of the writ (if in any case demandable) cannot be craved after the day on which the cause is set for trial. *Layman* v. *Waymick*, 6 Blackf. 189.

Where the process states a special capacity in which the plaintiff sues, the declaration must conform to it; but where the writ is general, the declaration may describe the parties in a particular character. *Cole, et al.*, v. *Penniwell, et al.*, 5 Blackf. 175.

The dismissal of the suit after the writ has been quashed, is a nullity. Ibid.

The quashing of the writ puts an end to the suit, and is a final judgment, which may be reversed on appeal or writ of error. Ibid.

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being brought before the court, shall be notified of the accusation against him, and have a reasonable time to make his defence.

Person fined for contempt may show such fine, &c. if indicted.

SECT. 17. Persons punished for contempt under the preceding provisions shall nevertheless be liable to indictment, if such contempt shall amount to an indictable offence; but the court before which the conviction shall be had, may, in determining the punishment, take into consideration the punishment before inflicted, in mitigation of the sentence.

Drawing up and signing minutes.

SECT. 18. Each day's proceedings of every such court shall be drawn up at full length by the clerk, which, after being read in the presence of the court, shall be signed in the probate court by the judge thereof, and in the circuit and supreme courts by the president or chief judge, or in his absence, by the remaining judges.

Place of holding courts.

SECT. 19. Wherever there shall be no court house provided for any such court, or it shall be destroyed by fire or other means, or shall from any cause be unsafe, or unfit for the holding of such court, the judge or judges thereof may appoint some convenient building near to the place where the court is required by law to be held, as a temporary place for holding such court, and the place so appointed shall be deemed the court house of said court for the time being, and all business which shall be transacted thereat shall be as valid as if the same were done at the usual or legal court house.

Court may adjourn in case of sickness.

SECT. 20. Whenever, from the prevalence of disease at any place where any court is by law appointed to be held, it shall be deemed dangerous or impracticable to hold such court at the time required by law, it shall be lawful for such court to meet at any time during such term, and adjourn the same to a day not exceeding three months from the time of adjournment, if deemed expedient to hold such court before the next regular term thereof.

Clerk shall publish the same.

SECT. 21. The clerk of said court shall forthwith cause to be published in some newspaper nearest to such court, such order of adjournment, with the time and place of such special session, and post up a similar notice at the court house door and in the clerk's office of the county in which such court is held.

Effect of such adjournment.

SECT. 22. The effect and operation of any such special adjournment shall, in relation to the duties of all officers, grand jurors, petit jurors, suitors, witnesses, persons recognized, and others, and to the operation of all proceedings, both civil and criminal, therein pending, be the same as though the court had adjourned to the court in course; and as to all such duties and operations, the session fixed by such special adjournment shall be regarded as a regular session.

Failure of court shall not affect causes.

SECT. 23. Whenever, from the prevalence of disease, sickness, or unavoidable accident, or from the necessary absence of any judge or judges thereof, any court shall not be holden at its regular term, no suit or proceeding therein pending shall, for

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PART III. that cause, be discontinued; but the duties of parties thereto, their witnesses, and all others concerned, shall be the same as though such suit or proceeding had been regularly continued.

CHAPTER 37.

OF THE SUPREME COURT, ITS POWERS AND DUTIES, AND THE OFFICERS OF SUCH COURT.

ARTICLE 1. Of the supreme court, its powers and duties.
ARTICLE 2. Of the attorney on behalf of the state in the supreme court.
ARTICLE 3. Of the clerk of the supreme court.
ARTICLE 4. Of the sheriff of the supreme court.

ARTICLE I.

Of the supreme court, its powers and duties.

SECTION
1. Judges.
2. Seal.
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5. Judges may occupy rooms on the circle.
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10. Appeals, when and how granted.
11. Writ of error.
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ARTICLE 1.

Judges. Constitution, art. 5, sect. 2.

SECTION 1. The supreme court consists of three judges, any two of whom shall form a quorum, and such court has appellate jurisdiction only, co-extensive with the limits of the state, under such restrictions and regulations, not repugnant to the constitution of this state, as may from time to time be prescribed by law; but the general assembly may give the supreme court original jurisdiction in capital cases, and cases in chancery, where the president judge of any circuit court may be interested or prejudiced.

Seal.

SECT. 2. The supreme court shall have a seal devised by the judges thereof, a description of which in writing shall be deposited in the office of the secretary of state, and remain a public record.

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Conservators of the peace. Where held.

SECT. 3. The judges of the supreme court, by virtue of their offices, are conservators of the peace throughout the state.

SECT. 4. The supreme court shall be holden in the court room in the state house at Indianapolis; but the judges of said court may, at any time during the term, adjourn to any other room in Indianapolis.

Judges take rooms on the circle.

SECT. 5. Said judges, or any of them, may occupy rooms in the state building on the governor's circle for offices, and consultation rooms.

Terms of the court.

SECT. 6. There shall be two terms of the supreme court in each year; one called the May term, commencing on the fourth Monday in May; the other called the November term, commencing on the fourth Monday in November.

Length of term.

SECT. 7. Each term shall consist of thirty days, unless the business shall be sooner disposed of, and may be enlarged beyond that time, if the court shall deem it expedient and necessary.

Failure of judges to attend.

SECT. 8. There shall be no discontinuance of any suit, process, proceeding, or matter returnable to or depending in the supreme court, although a majority of the judges shall fail to attend on the first or any subsequent day of the term; but in such case, any judge of said court, or sheriff, or in his absence, the clerk attending the same, may adjourn the court from day to day, for ten days successively; and if a majority of said judges shall not attend on the eleventh day, or if a majority shall attend at any day of the term, and shall afterwards fail to attend for ten consecutive days, the court shall stand adjourned until court in course.

Jurisdiction. See post sect. 70.

SECT. 9. Appeals to and writs of error issuing from the supreme court, shall extend to all judgments and decrees rendered or pronounced by any of the inferior courts of record in this state, except as follows:

Criminal causes.

1. No appeal shall be allowed from any inferior court to the supreme court in any criminal cause, except as provided in the ninety-first section of this chapter.

Justices of the peace.

2. No appeal or writ of error shall be allowed in respect to judgments rendered by any inferior court, in suits which originated before justices of the peace, when the amount in controversy, exclusive of interest and costs, is under the sum of twenty dollars.

Same.

3. In all cases when judgment shall be rendered by an inferior court of record, reversing or affirming the decision of a justice of the peace, whenever the amount in controversy, exclusive of interest and costs, is under fifty dollars, the supreme court shall have no jurisdiction of any such cause, if a supersedeas be refused; and no docket fee shall be recovered in any cause embraced in this and the preceding clause of this section.

Appeals, when and how granted.

SECT. 10. No appeal from any judgment or decree of an inferior court shall be allowed to the supreme court, unless it shall have been prayed for and granted by the court whose decision is appealed from, at the term at which such judgment or decree was rendered or pronounced, and the appellant shall have filed

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in the office of the clerk of the court in which such appeal is prayed, a bond to the appellee, with sufficient surety, to be approved by such court, with condition for the due prosecution of his appeal, and the payment of any judgment, decree, and costs, which may be rendered or affirmed against him; such bond to be in such penalty, and to be filed within such time, as the court appealed from shall deem just and reasonable. ARTICLE 1.

SECT. 11. Writs of error upon any final judgment or determination are writs of right, and shall issue of course out of the supreme court, in vacation as well as in term, subject to the regulations prescribed by law. Writ of error.

SECT. 12. Writs of error must be brought, Writ of error, by whom brought.

1. By the party against whom the judgment or determination complained of was rendered.

2. In case of his death, then by his executors or administrators, if the judgment or determination was for the recovery of debt or damages only. Executors, &c.

3. In case of the death of such party, if the judgment or determination was for the recovery of real estate, or the possession thereof, or if the title to real estate was determined thereby, then by the heirs or devisees of such deceased party to whom such estate descended, or might have descended, or was devised. Heirs, &c.

4. By any person having an estate in reversion, or remainder in any real property, which shall have been recovered, or the possession of which shall have been recovered in any action relating to the property, brought against any tenant for life, or for years, to which action such person was not a party; and such writ may be brought within the time prescribed by law by such person, as well during the lifetime of such tenant as after his death. Reversioner, &c.

5. By any party in whose favor any judgment or decree may have been rendered, but then only when no execution shall have issued thereon; and after his death, by his personal representatives, heirs, or devisees, or other person interested in such suit, or in any real estate affected by such judgment or decree, in the same cases as if such judgment or decree had been rendered against such party. By plaintiff.

SECT. 13. If a judgment be recovered by or against a female, and she afterwards marry, a writ of error may be brought thereon, by her and her husband jointly. Feme sole, marrying after judgment.

SECT. 14. If there be several plaintiffs or defendants, and any of them die, a writ of error may be brought by or against the survivors. By surviving parties.

SECT. 15. Writs of error must be brought against the same person who was a party to the judgment on which it is brought; or in case of his or their death, such writ may be brought, as follows: Against whom brought.

1. If such judgment was for the recovery of debt, or damages only, then against his executors or administrators. Executors, &c.

2. If the judgment was for the recovery of real estate, or the possession thereof, or in any action by which the title to Heirs, &c

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real estate was determined, then against the heirs of such person to whom such real estate descended, or against the devisees of such estate; or if such estate shall have been conveyed by such deceased party, previous to the bringing of such writ of error, then against the owners thereof claiming under such conveyance.

Feme sole defendant.

SECT. 16. If any party to any judgment or final determination be a female, and shall marry before writ of error is brought, such writ must be brought against her and her husband.

Death of joint plaintiff, appellant, defendant, appellee, &c.

SECT. 17. If there be two or more plaintiffs in error, or appellants, and one or more of them die, either before or after the assignment of errors, or if there be two or more defendants in error, or appellants, and one or more of them die, either before or after the assignment of errors, the writ of error, or such appeal, shall not abate thereby, but such death shall be suggested on the record, and the appeal or writ of error shall proceed at the suit of the surviving plaintiffs or appellants, or against the surviving defendants or appellees, as the case may be.

Death of all the plaintiffs in error or appellants.

SECT. 18. If all the plaintiffs in the writ of error or in such appeal, die after the bringing thereof and before judgment rendered thereon, the executors or administrators of the last surviving plaintiff, or the heirs and devisees of the plaintiffs, in cases where they would be entitled to bring writs of error, may be substituted, and the cause shall proceed at their suit.

Death of all the appellees or defendants.

SECT. 19. If all the defendants or a sole defendant in a writ of error, or all the appellees or a sole appellee, die after the bringing of the writ of error, or the taking of the appeal and before judgment thereon, the executors or administrators of such defendant or defendants, appellee or appellees, or their heirs or devisees, as the case may require, may be compelled by scire facias to become parties to such writ of error or appeal; and after due service of such writ, if they fail to appear, the the court shall enter their appearance and proceed and give judgment as if they had appeared.

Female plaintiff or defendant marrying after error or appeal, &c.

SECT. 20. If a female appellant or plaintiff in error, or a female appellee or defendant in error, marry after taking an appeal or bringing a writ of error, the husband on his application, may be joined with her and have his name inserted in the proceedings.

Scire facias against the husband.

SECT. 21. If such husband do not apply, then, on proof by affidavit of such marriage, the opposite party may have him made a party to such appeal or writ of error by scire facias.

Who shall join in bringing a writ of error.

SECT. 22. If there be several persons entitled to bring a writ of error, living at the time of bringing such writ, they shall all join therein, unless one or more of them be permitted by the court to proceed separately.

When incapable by insanity or out of the state.

SECT. 23. Upon due proof, by affidavit or otherwise, to the satisfaction of the court, that any person not joined in such writ is incapable by reason of insanity, or that his consent could not be obtained by reason of his being out of the state, the party bringing such writ shall be allowed by the court to

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prosecute the same without joining such other person, in like manner as if he were joined.

Or refuses.

SECT. 24. Whenever any person who ought to be joined in the prosecution of the writ of error, shall refuse, on proof by affidavit or otherwise of his refusal to join in the prosecution of such writ being made to the court, further proceedings on such writ shall be stayed until a rule of court shall have been served on the person thus refusing.

Rule how served.

SECT. 25. Such rule shall be served on such person at least ten days previous to the time of appearance therein specified, by personal service or by leaving a copy thereof at his last place of residence.

Failure to answer rule.

SECT. 26. If such person do not appear at the time specified and apply to be joined in such writ of error, his default shall be entered, due proof of the service of such rule having been first made, and he shall be thereafter precluded from bringing any writ of error on the same judgment.

If he appear may be joined.

SECT. 27. If he shall appear and apply to be joined on such writ of error, the court shall permit the proceedings to be amended by the insertion of his name, and such writ shall proceed in like manner as if he had been joined in the first instance.

Effect, &c.

SECT. 28. When the name of any person is not joined in such writ, on the ground of insanity or that his consent could not be obtained by reason of his being absent from the state, his right shall not be impaired by his not joining in such writ of error; but he may bring his writ of error in like manner separately, as if no such writ had been brought.

Costs.

SECT. 29. The costs of the rule in such case shall be paid by the party prosecuting such writ of error, or the person against whom such rule shall have been granted, as the court in its discretion may direct.

Limitation of writ of error.

SECT. 30. No writ of error shall be brought after the expiration of five years from the rendition of the judgment or decree complained of, unless the plaintiff in error shall have been at the time of rendering such judgment or decree, an infant, a married woman, non compos mentis, imprisoned, or out of the United States on public business; in any of which cases the the five years shall be computed from the time such disability shall cease.

Writ how issued and when returnable.

SECT. 31. Writs of error shall be issued by the clerk of the supreme court, and tested in the name of the clerk and sealed with the seal of said court; and shall be returnable to the first day of the term thereof next after the date of such writ.

To whom directed.

SECT. 32. Writs of error shall be directed to the judges of the court in which the judgment or final determination on which such writ is brought was rendered, commanding them to cause a transcript of the record and all things concerning the same, to be brought before the said supreme court.

How executed.

SECT. 33. Such writ shall be served on the clerk of such inferior court, who shall cause a transcript of the said record

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and proceedings to be made, and shall certify and annex the same to such writ, and shall endorse on such writ, and sign a proper return thereto, under the seal of his court.

Return.

SECT. 34. Such clerk shall return said writ to the supreme court on or before the return day thereof, which he may do by any safe hand, or he may transmit the same by mail, at the expense of the party prosecuting the same.

Failure to return.

SECT. 35. Any clerk failing to return such writ of error as herein required, shall be liable to be punished by the supreme court for contempt of its process.

Order of supersedeas.

SECT. 36. No writ of error shall stay or supersede any execution on the judgment or final determination of the inferior court on which such writ is brought, unless the supreme court in term, or a judge thereof in vacation, after inspecting the errors assigned on the record, shall make an order that such writ shall stay or supersede execution as aforesaid; which order shall be endorsed by the clerk of the supreme court on such writ of error.

Bond in such case.

SECT. 37. But no such order shall operate to stay or supersede execution upon the judgment or final determination complained of, unless the plaintiff in error, or some person in his behalf, shall give bond to the defendant, with one or more sureties, in such penalty as the clerk taking such bond shall require, with condition that the plaintiff shall prosecute his suit to effect, and shall pay and satisfy the judgment which may be rendered or affirmed against him, and costs.

By whom approved.

SECT. 38. Such bond and sureties may be approved by the clerk of the supreme court, or the clerk of the circuit court to which such writ of error is directed.

Where filed.

SECT. 39. The bond, when given and approved, shall be filed in the office of the clerk of the court below, for the use of the defendant in error, and no execution shall be issued on the judgment complained of; and if execution shall have been already issued, the clerk of the court below shall make and sign a certificate of the issuing of such writ of error, and the filing of such bond, and after notice of such certificate to the officer holding such execution, all further proceedings thereon shall be stayed.

Supersedeas.

SECT. 40. An appeal when granted, the appeal bond being filed and approved as required in this article, shall operate to stay and supersede execution, and all other proceedings on the judgment or determination appealed from in the court below, from the time of obtaining such appeal, in like manner and for the same length of time as is provided in cases of writs of error.

Limitation of supersedeas.

SECT. 41. The filing and approval of the appeal bond, or bond to stay or supersede execution in case of a writ of error, shall operate to stay and supersede execution until the final determination of such writ of error or appeal; but at any time after the expiration of four years from the date of issuing such writ or taking such appeal, if the same shall not have been determined, such inferior court may proceed to execution on the

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judgment or final determination on which such writ was brought or appeal taken, as if the same had never been issued or taken.

Expiration of supersedeas to be certified.

SECT. 42. The clerk of the supreme court, on the application of any party interested, shall certify under his hand and the seal of his court, the time at which said four years shall have expired; and such certificate shall be sufficient authority for the inferior court to proceed to execution, as provided in the last section; unless before that time such cause shall have been reversed by the supreme court.

When second order of supersedeas shall not be made.

SECT. 43. Neither the supreme court, nor any judge thereof, shall make a second order to stay or supersede execution on any judgment after the expiration of the time limited in the last two sections for the operation of the stay or supersedeas first granted.

Appeal bond in ejectment, &c.

SECT. 44. When any appeal is taken to the supreme court from a judgment in waste, or for the recovery of land, or the possession thereof, the condition of the appeal bond, in addition to the matters herein before prescribed, shall further provide, that the appellant shall also pay and satisfy all damages which may be sustained by the appellee for the mesne profits of the premises recovered, or for any waste committed thereon, as well before as during the pendency of such appeal.

In case of writ of error in ejectment, &c.

SECT. 45. When a writ of error is brought, the bond required to stay or supersede execution, shall, in the cases specified in the preceding section, contain similar provisions to those which are required in such appeal bond.

Summons to the defendant in error.

SECT. 46. The clerk of the supreme court, at the time of issuing a writ of error, shall issue a summons directed to the sheriff of the county where the defendant in error shall reside, requiring such sheriff to summon the defendant to appear on the first day of the next term of such court, to answer the errors complained of.

Non-resident defendant.

SECT. 47. Whenever it shall be made to appear to such court by satisfactory proof, that the defendant is not a resident of this state, the court may order that notice of the pendency of such writ of error shall be given in some newspaper printed and published in this state, for three weeks successively; after which, such cause shall proceed in all respects as if such defendant had been served with process.

Notice to attorney, &c. in such case.

SECT. 48. If it shall appear to the court that any defendant in error is not a resident of this state, the court, in addition to the notice in some public newspaper as aboved provided, shall require satisfactory evidence that the attorney of record for such defendant in the court below, if living in this state, has had notice of the pendency of such writ of error before rendering judgment thereon.

Trial, when had.

SECT. 49. The defendant in error, at the term to which such writ of error shall be returnable, if such summons shall have been served upon him at least ten days before the time at which it is returnable, and the appellee, at the term next after the time at which such transcript shall be filed in the supreme

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court, may demand a trial; and the court shall not continue the cause to another term without the consent of the defendant in error, or the appellee, unless for sufficient cause shown to the court.

Transcript may be filed, and errors assigned thereon.

SECT. 50. When the plaintiff in error shall obtain a transcript of the record from the clerk of the inferior court, certified by such clerk as being a full and complete transcript of the record and proceedings in the suit named, and sealed with the seal of said court, such plaintiff may assign upon said transcript the errors upon which he intends to rely, and file the same in the office of the clerk of the supreme court.

Summons to defendant.

SECT. 51. Such clerk shall endorse thereon the time when the same was filed, and in such case it shall not be necessary to issue a writ of error to the court below; but such clerk shall issue a summons for the defendant in like manner as if a writ of error had been issued.

Proceedings in such case.

SECT. 52. The proceedings in such case, after filing the transcript aforesaid, shall be the same in all respects as if a writ of error had been issued, and duly returned as required by law.

Pleadings, when to be filed.

SECT. 53. No pleadings shall be required on writs of error, except an assignment of errors, to be filed by the plaintiff or appellant on or before the first day of the term, at which such cause may be called for hearing, and an answer thereto by the defendant at such time as the court shall direct.

What errors shall be assigned. See 5 Blackf. 182.

SECT. 54. The plaintiff, except in cases of wills, shall assign errors in matters of law only: in cases of wills the plaintiff may assign errors upon matters of fact, as well as matters of law, to be determined before said court.

How far cause shall be reversed.

SECT. 55. When any judgment or decree of any inferior court shall be reversed on account of any error which shall have accrued in the progress of the cause in the court below, the supreme court shall not reverse the proceedings any further than to include the first error; and the cause shall be remanded with the opinion of the supreme court, and their instructions to the inferior court, to commence from the last regular proceeding had thereon, and proceed to trial and judgment in like manner as if there had been no proceedings subsequent to such last regular proceeding, following such opinion and instructions of the supreme court in the further progress of said cause.

Judgment in case of part reversal.

SECT. 56. In case of the partial reversal of a judgment, if no further trial at law be necessary, the supreme court shall render such judgment as the court below should have rendered.

May reverse decree or remand the cause.

SECT. 57. If a decree in equity be reversed, in whole or in part, the supreme court may either pronounce such decree as the inferior court should have pronounced, or may remand the cause to the court below for further proceedings, consistent with the opinion and instructions of the supreme court.

Damages.

SECT. 58. When execution shall be stayed or superseded on the judgment or decree of any inferior court, by virtue of any of the provisions of this article, and such judgment or decree

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shall be affirmed in part or in whole, the defendant in error shall recover damages from the appellant or plaintiff in error, not exceeding ten per centum on the amount for which such judgment or decree is affirmed, and also the costs in the court below and in the supreme court, subject to the provisions of the next section.

Costs.

SECT. 59. Costs may be adjudged by the supreme court, as follows:

1. If the judgment or decree be affirmed in the whole, the appellee or defendant in error shall recover of the appellant or plaintiff in error, such of his costs in the supreme court as such court may award.

2. If the judgment or decree be reversed in part, and affirmed in part, the costs in the supreme court, and in the court below, may be apportioned among the parties, in such manner as the court in its discretion shall think fit.

3. If error was committed in the progress of the cause in the court below, and such cause is remanded, with instructions to such inferior court, to commence from the last regular proceeding therein, the party who committed the first error shall pay to the opposite party such costs as the supreme court may award.

4. In all other cases in which costs may accrue, the court shall adjudge the payment of the same, in such manner as may be deemed just and equitable.

Judgments in supreme court against executors, &c.

SECT. 60. Judgments against executors or administrators of a deceased party to any appeal or writ of error in the supreme court, for damages or costs, shall have the like and no other effect, and shall be proceeded on in the same manner as judgments in a court of original jurisdiction in any personal action against executors or administrators, as such.

After reversal of decree, complainant may dismiss, &c.

SECT. 61. Whenever the decree in chancery of any circuit or probate court shall be reversed, in whole or in part, by the supreme court, and remanded to such inferior court with instructions, the complainant in the bill may, at any time after the opinion of the supreme court shall be certified to such inferior court, dismiss his bill, without prejudice to his legal or equitable rights, notwithstanding such instructions, upon the payment of all costs.

Equal division of the supreme court.

SECT. 62. Whenever, on hearing an appeal or writ of error, the supreme court shall be equally divided in opinion, the suit shall be continued until the next term, and if then the court be still equally divided, the judgment or decree of the inferior court shall be affirmed.

Issues of fact.

SECT. 63. The supreme court, in chancery causes, may direct issues, or other proceedings known to the law, to try any question of fact, proper for the decision of a jury.

Jury.

SECT. 64. Whenever the decision of a jury shall be requisite, such court may order a jury to be summoned and empannelled, in such manner, and at such time as the court shall direct; and the jurors thus summoned shall be subject to the same fines

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and penalties for failing to attend, or for any other misconduct, as jurors summoned to attend in the circuit courts of this state.

Witnesses.

SECT. 65. Witnesses shall be summoned to testify before the supreme court, in like manner, and shall be subject to the same process, fines, and penalties which are prescribed by law respecting witnesses in the circuit courts of this state.

Depositions.

SECT. 66. For good cause shown, the supreme court in term, or any judge thereof in vacation, may grant commissions to take the depositions of witnesses; and a dedimus potestatem, authorizing the taking of depositions, to be read on the hearing or trial of any cause or issue, and depositions de bene esse, may be issued by the clerk of the supreme court, in like manner and cases as the same may be done in the circuit courts, and with the like authority and effect, and such depositions shall be taken with the same notice to the opposite party, and subject to the same objections.

Supreme court may send issue of fact to a circuit court.

SECT. 67. When any question or issue of fact shall arise or be made in the supreme court, which shall require the intervention of a jury to try the same, such supreme court, instead of directing a trial in its presence, may cause a record to be made up, containing the necessary pleadings, entries, and issues, and may send the same for trial to any circuit court of this state, the president judge of which can sit on the trial thereof, taking care to send the same for trial into a county which shall be the most convenient for the witnesses and parties interested in the matter in controversy.

Duty of circuit court.

SECT. 68. Such circuit court shall proceed to cause such question or issue of fact to be tried, in like manner in all respects, as if the same had originally arisen in such court, and shall cause a record thereof, and of the finding of the jury, to be made and certified to the supreme court, within twenty days after such trial shall be finally had, together with the particulars of the costs of such trial.

Return of verdict in such case.

SECT. 69. Upon the return of such verdict, the supreme court may proceed thereon, in like manner, in all respects, as if the same had been rendered in such supreme court.

Appeals from interlocutory order, &c.

SECT. 70. Appeals to the supreme court shall be allowed to be taken from any interlocutory order or decree of any circuit or probate court in this state, in any of the following cases:

In case of payment, delivery, &c.

1. On any such interlocutory order or decree of either of said courts, whereby payment of a specific sum of money is awarded or decreed, other than costs, or to compel the execution of any conveyance or other instrument, or to compel the delivery or assignment of any securities, evidences of debt, documents, chattels, or things in action.

Delivery or sale of real estate.

2. In causes or proceedings in which any order or decree shall have been made for the delivery of the possession of any real property, or the sale thereof.

Injunction.

3. From any order or decree granting or dissolving an injunction.

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Appeal and appeal bond.

SECT. 71. No such appeal shall be granted by the court from whose decision the same is prayed, unless such appeal is taken at the time when such order or decree is made, nor until a sufficient bond, as required in other cases of appeals, shall have been given by the appellant.

Stay of proceedings in such case.

SECT. 72. Such appeal shall not stay the proceedings in the court below upon such order or decree, nor the suit or proceedings in which such order or decree was made, for a longer time than thirty days, unless the supreme court in term, or some judge thereof in vacation, shall make an order to the effect that such order or decree or proceedings be stayed: such order shall specify whether proceedings on such order or decree only shall be stayed, or whether the proceedings on such order and decree, and also further proceedings in the suit or cause in which such order or decree was made shall be stayed; and in either case, the court below, and its officers, and all others, shall be governed accordingly.

Liability of sureties on appeal bond in such case.

SECT. 73. The sureties in any appeal bond given, pursuant to the provisions of the section next before the last, shall only be liable for the costs of such appeal, if no order to stay proceedings is made, as required in the last section.

Decision on such appeal certified to court below.

SECT. 74. The decision of the supreme court on such appeal shall be certified to the court below, as in other cases, with directions, if necessary, to such court how to proceed; and damages may be awarded, and costs shall be taxed and apportioned, as the supreme court in its discretion may adjudge.

Probate court removing executor, &c.

SECT. 75. Appeals from any decision of the probate court, suspending or removing any executor, administrator, or guardian, shall not affect any such decision, until the same be reversed.

New trials.

SECT. 76. The supreme court, in granting new trials, may grant the same on the payment of costs, or on the costs abiding the event of the suit as the justice and equity of the case may require.

Sci. fa. when notice must be given to attorney.

SECT. 77. When there have been two returns of "nihil" on writs of scire facias issued out of the supreme court, no judgment shall be rendered or order made thereon until the court is satisfied that the attorney of the party in the court below, who is to be affected by such judgment or order, has had notice of the issuing and object of such writ, if such attorney be alive and a resident of the state.

What shall be sufficient service of notice, rule, or summons.

SECT. 78. When any summons, rule, or notice is, by this article or by order of the supreme court, required to be served on any person who is a resident of this state, and he cannot be found after diligent search, it shall be a sufficient service thereof, if a copy be left with some person of mature age at the last residence of such person, under such circumstances as to induce a reasonable presumption, that such copy came to the knowledge of the proper person.

Executions.

SECT. 79. Executions issued from the supreme court, shall be the same as those which are or may be issued from other

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courts of record; and shall be returnable at such common return day of such court as the court shall direct.

Return day of process. Court may fix return days.

SECT. 80. The general return day of all process to the supreme court shall be the first day of the term next after issuing the same; but such court may, from time to time, by a general rule of court, designate certain days during the term as common return days, when the same shall be found expedient and necessary.

Powers of supreme court respecting writs, rules, &c.

SECT. 81. The supreme court shall have power and authority,

1. To frame, direct, and cause to be used all writs and process, and to establish modes of proceeding and practice to be used and observed by said court, which may be necessary in the exercise of its powers and authority; and may make and record rules and regulations respecting the same; and shall cause the same to be published.

Bonds.

2. To establish general rules and regulations respecting bonds required by this article, the amount of the penalties thereof, and for accepting and approving sureties therein.

Supersedeas

3. To establish rules and regulations in relation to giving notice to officers of inferior courts of the granting of stay of execution, or of supersedeas on writs of error.

And proceedings.

4. To establish all necessary rules and regulations respecting all matters and proceedings which are requisite to such court in the exercise of its power and authority, and which are not specially provided for by law.

May administer oaths, fine for contempts, and compel the attendance of witnesses.

SECT. 82. The supreme court shall have full power to impose and administer all necessary oaths and affirmations; to punish by fine and imprisonment for contempt of its authority and process; and to compel the attendance of witnesses by attachment and fine.

May establish rules as to the practice of inferior courts, &c.

SECT. 83. The supreme court shall have power to establish general rules, so far as may be practicable, and revise the same with a view to the attainment of the following improvements in the practice of the different courts of this state:

1. The abolishing of fictitious and unnecessary process and proceedings.

2. The simplifying and abbreviating of pleadings and proceedings.

3. The expediting the decision of causes.

4. The diminishing of costs; and

5. The remedying of abuses and imperfections which may be found to exist in the rules or practice in any class of actions cognizable in said courts.

Certain defects, variations, &c. to be deemed supplied, &c. in the supreme court. See chapter 40, article 9.

SECT. 84. No judgment in any civil action shall be stayed, reversed, impaired, or affected for any defect of form, variance or other imperfection contained in the record, pleadings, process, entries, returns, or other proceedings therein, which by law might be amended by the court in which such judgment was rendered; but such defects and imperfections shall be sup-

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plied and amended, or shall be deemed to be supplied or amended in the supreme court.

No judgment in case tried on its merits, &c., to be reversed. See chapter 40, article 9.

SECT. 85. No judgment in any civil action shall be stayed reversed, impaired, or affected, after the verdict of twelve men where it shall appear to the court that the merits of the case have been fairly and fully decided by such verdict, and that such verdict and the judgment thereon might be effectually pleaded in bar to another action for the same cause.

Non-suit in supreme court to be certified to court below.

SECT. 86. Whenever any appellant shall fail to file his appeal within the time prescribed, or whenever any appellant or plaintiff in error shall fail to prosecute his appeal or writ of error, whereby the same is dismissed or discontinued, the clerk of the supreme court shall make out a certificate of such failure which, on being presented to, and filed with the clerk of the inferior court, shall be a sufficient authority for execution and all other proceeeings, as if no appeal had been granted, or writ of error brought.

Supreme court may issue execution or remand cause for execution.

SECT. 87. On appeals and writs of error the supreme court may issue execution or remand the cause to the inferior court in order that execution may there be issued, or that other proceedings may be had thereon.

Non-resident plaintiffs, &c. shall give bond for costs.

SECT. 88. Non-resident plaintiffs in error and appellants, shall give security for costs, when required so to do by the supreme court.

Decisions of supreme court to be in writing.

SECT. 89. The opinions and determinations of the supreme court shall be in writing, except in cases where the point or points determined are of an unimportant nature, and shall be recorded by the clerk of such court.

Process, when to be returned if made returnable at a wrong time.

SECT. 90. No process shall be deemed to be returnable at any time after the term next following the date of its issue; but if made returnable in violation of the preceding provision, it shall be returned on the last return day of such next following term.

Writ of error shall not supersede or stay execution in criminal case, except for fine and costs only.

SECT. 91. No appeal shall be allowed from any inferior court to the supreme court in any criminal case, nor shall execution upon the judgment in any such case be stayed or superseded by reason of any writ of error which shall be prosecuted in the supreme court, except when the judgment is for a fine, or fine and costs only; in which case, execution may be stayed or superseded by order of the supreme court, or any judge thereof, as in civil causes.

Criminal cause reversed, defendant to be released from state prison,

SECT. 92. When any judgment of any circuit court, by virtue of which any individual shall be imprisoned in the state prison, shall be reversed by the supreme court, upon the ground that no offence is charged in the indictment, the supreme court shall cause the governor to be immediately informed thereof, whose duty it shall be to order the release of such individual forthwith.

Or returned to the county from which he was sent, to be again tried.

SECT. 93. Upon the reversal of any such judgment, if the reversal is not upon the ground specified in the last preceding section, the supreme court shall immediately notify the governor

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thereof, who shall issue his mandate to the superintendent of the state prison; whereupon it shall be the duty of said superintendent forthwith to cause the prisoner to be returned to the county where his trial upon which he was convicted was had, and delivered over to the jailor of such county, for safe keeping until the case is finally disposed of.

Fees of sheriff.

SECT. 94. For returning any such prisoner as above required, such superintendent shall be allowed the same fees and compensation that the sheriff was allowed for taking him to the state prison.

If convict in such case has served more than half his term, he shall be released.

SECT. 95. When any case is reversed, as contemplated in the last three sections, and the prisoner shall have served out more than half the period of time for which he may have been sentenced, he shall not be remanded to the proper court for trial, but shall be discharged on the order of the governor, as provided in the ninety-second section.

Convict must serve his full term on other judgment.

SECT. 96. If any such prisoner is held in custody by the superintendent of the state prison, by virtue of any other judgment, by which such prisoner is under sentence at hard labor in the state prison, no such order or mandate from the governor shall authorize or empower such superintendent to discharge such prisoner, or return him for trial to such county, until he shall have served out the time required by such other judgment, or he shall have been legally discharged therefrom.

Minutes of supreme court.

SECT. 97. The proceedings of the supreme court for every day of the term shall be drawn up at full length by the clerk against the next sitting of the court, and such corrections being made therein as shall be necessary and right, shall be signed by the chief judge of said court.

Docket.

SECT. 98. Such clerk shall docket all causes, in the order in which they are received or instituted, that they may be heard in the same order, unless the court, for good cause shown, direct a different mode of hearing them, or any of them.

Parties manage their causes.

SECT. 99. In the supreme court, parties may manage their own causes personally, or by such attorneys and solicitors as by law and the rules of said court are permitted to manage causes therein.

ARTICLE II.

Of the attorney on behalf of the state in the supreme court.

SECTION	SECTION
100. Attorney for the state.	102. Attorney pro tem. for the state.
101. Prosecuting attorney of another circuit may manage cause.	103. Further duties of such attorney.

Attorney for the state.

SECT. 100. It shall be the duty of the prosecuting attorney of the judicial circuit of which the county of Marion shall form a part, to appear, by virtue of his office, on behalf of the state

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of Indiana, as attorney for the state, and superintend, prosecute, and defend all indictments, pleas, suits, matters, and proceedings whatsoever, which may be appealed or brought into the supreme court by writ of error or otherwise, in which the state is a real party, or has any interest. ARTICLE 3.

SECT. 101. In any matter or suit specified in the preceding section, the attorney who may have prosecuted or defended the same on the part of the state in the court below, may, with the consent of the supreme court, be associated with such attorney for the state, in the prosecution or defence of such matter or suit, or he may, with the consent of the attorney for the state in the supreme court, and with leave of such court, have the sole management and control of such case; and then such attorney for the state shall be exonerated from all further attention to the same. Prosecuting attorney of another circuit may manage cause.

SECT. 102. In case of the absence of the attorney for the state, the supreme court may appoint an attorney to supply his place, who shall receive such compensation therefor as to the court shall seem reasonable, to be drawn from the state treasury on the allowance of the court, and shall be deducted from the salary of such attorney for the state, which he is authorized to receive for his services as such attorney. Attorney pro tem. for the state.

SECT. 103. Such attorney for the state, whenever requested by the governor, secretary of state, treasurer of state, or auditor of public accounts, shall prepare drafts for contracts, obligations, and other instruments which may be wanted for the use of the state: he shall also, when required by any of said officers, give opinions and instructions upon any legal question which may arise in the performance of any of the duties of any such officers. Further duties of such attorney.

ARTICLE III.

Of the clerk of the supreme court.

SECTION
104. Bond.
105. Office, books, &c.
106. Duties.
107. Shall attend court — may appoint deputy.
108. Oath of deputy.
109. Clerk may administer oaths.
110. Shall issue and seal writs.
111. Shall keep and file all papers, books, &c.
SECTION
112. Shall make record, &c.
113. Transcript to inferior court.
114. Allowances to sheriff.
115. Allowances to clerk.
116. How paid.
117. Clerk shall certify opinion of supreme court to court below.
118. Rules of court relating thereto.
119. Examination of clerk's office.

SECT. 104. The clerk of the supreme court, before he enters on the duties of his office, shall give bond in the penalty of five thousand dollars, with at least two sureties, to be approved by the supreme court, with condition for the faithful discharge of Bond. See ante pp. 103, 108, 109.

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the duties of his office; which bond shall be recorded in said court, and filed in the office of the secretary of state for safe keeping.

Office, books, &c.

SECT. 105. The clerk of the supreme court shall reside and keep his office at the seat of government, and he shall procure and keep, at the expense of the state, for the use of said court and office, all the necessary record books, and books for dockets, entries, and minutes of said court.

Duties.

SECT. 106. Said clerk shall do and perform all the duties required of him by law, as clerk of the supreme court.

Attend court, and may appoint deputy.

SECT. 107. Such clerk shall attend the court during its terms, and may appoint any suitable person to be his deputy, by writing under his hand, to be filed in his office.

Oath of deputy. See ch. 4, sect. 85, p. 109.

SECT. 108. Every person so appointed a deputy shall take the same oath as is required of such clerk; and whenever such clerk is from any cause unable to attend to the duties of his office, his deputy so appointed may perform all the duties appertaining to the same, such clerk being liable in like manner for all the acts of such deputy as for his own.

Clerk may administer oaths.

SECT. 109. Whenever any oath, affirmation, or affidavit is or may be required or authorized by law, in any cause, suit, matter, or proceeding before the supreme court, or which may be necessary in the discharge of the duties of the office of such clerk, the same may be taken before him or his deputy.

Shall issue and seal writs.

SECT. 110. All writs and process from the supreme court shall be issued by the said clerk, and the same shall be tested and signed in his own name, and sealed by him with the seal of said court.

Shall keep and file all books, papers, &c.

SECT. 111. All books, records, documents, and papers of any kind, required to be filed or deposited in the supreme court, or in the office of the clerk, shall be filed by him, and the time of such filing accurately endorsed by him thereon: he shall also carefully keep and preserve all records, documents, papers, books, and manuscripts belonging or appertaining to his said office, or to said court, or to any cause or proceeding which has been decided, or is pending therein.

Shall make record.

SECT. 112. Such clerk shall make a full and complete record of all cases, upon the final determination thereof, which shall have originated in the supreme court, or shall have been transferred from a circuit court before a final decision therein, by virtue of any law of this state.

Transcript to inferior court.

SECT. 113. When any other cause shall be finally determined, the clerk shall make a complete record thereof, not including therein the transcript from the court below.

Allowance to sheriff of supreme court.

SECT. 114. The supreme court shall make such allowances to the sheriff of said court as they may deem reasonable, for his services while in attendance in term time; also, an allowance for all fuel, stationary, and other necessary articles for the use of said court furnished by said sheriff.

To the clerk.

SECT. 115. Such court shall also allow the clerk thereof such sums as shall be reasonable for record books and stationary fur-

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nished by said clerk for said court, or for the necessary use of his said office. ARTICLE 4.

SECT. 116. All such allowances shall be entered on the order book of said court, setting forth specifically for what object each allowance was made; a copy of which, certified by said clerk, shall authorize the auditor of public accounts to audit the amount thus allowed, and the same shall be paid by the treasurer of state on the proper warrant out of any moneys appropriated to defray the expenses of the judiciary. How paid.

SECT. 117. The clerk of the supreme court, as soon as the same can be done, shall certify the opinion and decision of the court to the inferior court from which the cause in which such decision and opinion were given, shall have been brought on appeal or by writ of error. Clerk shall certify opinion to court below.

SECT. 118. The supreme court may establish general rules respecting the mode and time of certifying their opinions and decisions to the proper inferior courts, not inconsistent with the laws of this state and the speedy administration of justice. Rules of court relating thereto.

SECT. 119. The supreme court shall annually appoint one of the judges thereof to inspect the office of such clerk, and to report at the next term of the court the condition in which he found the records and papers; which report shall be recorded. Examination of clerk's office.

ARTICLE IV.

Of the sheriff of the supreme court.

SECTION

120. Sheriff's appointment.
121. Vacancies, or in case sheriff not indifferent.
122. Bond.
123. Duties.
124. Execution of writs.
125. Sheriff's liability, &c.
126. Deputies, sheriffs of counties.
127. Same.
128. Return of process.
129. Moneys transmitted by sheriffs by mail.
130. Fees.
131. Same
132. Poundage.
133. Mileage.
134. Postage.
135. Coroner may act as deputy, &c.
136. Court to allow fees in certain cases.
137. Remedy against sheriff and deputies.
138. Remedy of sheriff of supreme court against deputies.

SECT. 120. The supreme court shall appoint an executive officer, who shall be the sheriff of the supreme court, and who shall hold his office as prescribed by law. Sheriff. See ante pp. 103, 108, 109.

SECT. 121. When a vacancy occurs in vacation, any two of the judges may supply such vacancy, as the same could be done in term; and when any sheriff of the supreme court shall be interested, or may not be an indifferent person, as to any particular cause, matter, or proceeding, the duties respecting the same shall be performed by such suitable person as the court Vacancy, or in case sheriff not indifferent.

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shall appoint for that purpose, who shall execute such bond as the court may require.

Bond
See ante page 109, sec. 86.

SECT. 122. The sheriff of the supreme court shall give bond as such sheriff, with two or more sufficient sureties, to be approved by the court, with condition for the faithful discharge of the duties of his office.

Duties.

SECT. 123. Said sheriff shall, by himself or deputy, do and perform all the duties of his said office required by law; and shall attend said court in term, in such manner as the court shall direct, and execute all orders thereof, and discharge all the duties in relation to said court, which the sheriffs of the several counties are required to perform in relation to the circuit courts.

Execution of writs.

SECT. 124. He shall execute, by himself or deputy, all writs and process issued out of the supreme court, whether the same are issued in term or vacation.

Liability.

SECT. 125. Such sheriff shall be subject to all the penalties, forfeitures, amercements, liabilities, rules, process, and proceedings, for mal-conduct in office, and for neglect, failure, or refusal to discharge any of the duties of his said office, to which the sheriffs of the respective counties are or may be subject, for mal-conduct, or failure, neglect, or refusal to discharge similar duties in respect to the circuit courts.

Deputies.

SECT. 126. The sheriffs of the respective counties shall, within their counties, by virtue of their said offices, be deputies of the sheriff of the supreme court, without giving further bond or surety, and shall serve and execute all writs, process, rules, and orders, directed or issued out of the supreme court, which may be delivered to them by its sheriff, in such manner as such writs, process, rules, and orders are required by law to be served and executed, and such sheriffs respectively, and their sureties, shall be liable for any nonfeasance, misfeasance, or malfeasance in their said office, in respect of any of the duties prescribed by this article.

Same.

SECT. 127. When any writ, process, rule, or order shall come into the hands of the sheriff of the supreme court, he may transmit the same by mail to the sheriff of any county, to be executed as aforesaid.

Return of process.

SECT. 128. When any such writ, process, rule, or order shall have come into the hands of the sheriff of any county, as such deputy, he may enclose the same in a letter, directed to the sheriff of the supreme court, and deposite it in the post office at his county seat, ten days before the return day thereof, and by so doing he shall be exonerated from any liability for failing to return the same.

Moneys.

SECT. 129. If any moneys are to be returned with such writ or process, he may transmit the same by mail with said writ; but the testimony of the postmaster, that the same was duly mailed, shall be necessary to exempt him from liability.

Fees.

SECT. 130. The mileage and fees for service of any writ, process, rule, or order, issued out of the supreme court, shall

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be the same as allowed in the case of similar writs issued out of the circuit court.

Fees.

SECT. 131. When any such writ, process, rule, or order is served by the sheriff of any county as above provided, he shall be entitled to receive the fees for mileage, and the fee for the service thereof shall be paid to the sheriff of the supreme court.

Poundage.

SECT. 132. But where any money shall be collected by the sheriff of any county on any execution issued out of the supreme court, two-thirds of the poundage thereon shall go to such sheriff, and the remaining third to the sheriff of the supreme court.

Mileage.

SECT. 133. Fees for mileage shall in no case contemplated by the previous sections of this article, be charged or allowed, except from the county seat of the county in which the process is executed to the place of service.

Postage.

SECT. 134. The sheriff of the supreme court shall pay the postage incurred in the transmission of all such writs, process, rules, and orders to the different parts of the state, that execution or service thereof may be done as herein required, and also the postage incurred in returning the same, and all moneys collected thereon; and such sheriff shall be entitled to double postage therefor, which shall be taxed and recovered as a part of the costs of the proper suit or proceeding.

Coroner.

SECT. 135. In all cases in which the sheriff of any county is interested or not indifferent, the coroner of such county may act as the deputy of the sheriff of the supreme court, subject, he and his sureties to the same liabilities as if he were the sheriff of such county.

Court to allow fees in certain cases.

SECT. 136. Whenever any necessary service or duty respecting any cause or matter pending in the supreme court, shall have been done by such sheriff of the supreme court, or any other sheriff or coroner as his deputy, and no fee is allowed or fixed by law therefor, the supreme court may tax the fees at such sum as shall be just and reasonable, as a part of the costs of such cause or proceeding.

Remedy against sheriff and deputies.

SECT. 137. Whenever the sheriff of any county shall become liable for any moneys or damages to any party to any suit or proceeding in the supreme court, by reason of any misconduct, or failure, or refusal to perform any duty required of him by the provisions of this article, the party injured thereby may have an action for his use against such sheriff and sureties on his official bond; or such injured party may have his remedy against the sheriff of the supreme court and his sureties therefor.

Remedy of sheriff.

SECT. 138. If in such case a recovery is had against the sheriff of the supreme court, he may have an action for his use as the injured party, to recover such money or damages, and the costs of such suit against him or him and his sureties, against the sheriff of such county and his sureties on his official bond.

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CHAPTER 38.

OF THE ORGANIZATION, POWERS, AND DUTIES OF CIRCUIT COURTS; AND OF THE OFFICERS OF SUCH COURTS

ARTICLE 1. Of the circuit courts.
ARTICLE 2. Of the clerks of the circuit courts.
ARTICLE 3. Of sheriffs and coroners.
ARTICLE 4. Of masters in chancery.
ARTICLE 5. Of attorneys and counsellors at law.

ARTICLE I.

Of the circuit courts.

SECTION
1. Twelve judicial circuits.
2. Judges.
3. Their oath of office.
4. Style of court.
5. Courts, when held.
6. What judge or judges may hold circuit court.
7. Jurisdiction.
8. Chancery powers.
9. Criminal jurisdiction.
10. Power to issue writs.
11. When court may frame writ.
12. Powers as to judgments, decrees, executions, etc.
13. May award writ in criminal case to another county.
14. Subpœnas.
15. Commissions to take depositions.
16. Seal.
17. Seals in new counties.
18. Courts may punish for contempts.
19. May adopt rules etc.—Shall conform to rules of supreme court.
20. President judge may hold a court in any county.
21. In chancery, may hold a special term in another circuit.

SECTION
22. Notice to president judge in such case.
23. By whom such special term shall be holden.
24. Powers of such court at special term.
25. Appeal, etc.
26. Compensation of president judge.
27. How paid.
28. When chancery cause shall be certified to another circuit.
29. Clerk shall transmit papers.
30. Clerk shall be responsible. — Fee of transmission.
31. Cases in which chancery suit may be commenced in another circuit.
32. Judges conservators of the peace.
33. Failure to hold court not to affect causes.
34. Court adjourned if judges fail to attend.
35. Causes continued if no court.
36. Causes not tried to be continued, etc.
37. Elisors.
38. Their oath, bond, etc.
39. Minutes of the court. How signed.

Judicial circuits.

SECTION 1. The state shall be divided into twelve circuits for each of which a president judge shall be appointed, who, during his continuance in office, shall preside therein.

Judges.

SECT. 2. The circuit court for each county shall consist of such president judge and the associate judges of such county.

Oaths.

SECT. 3. Before entering on the duties of their offices, each of said judges shall take the oaths prescribed by the constitution and laws of this state, which shall be endorsed on their respective commissions; and a copy of the oaths of the pre-

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sident judge shall be filed in the office of the secretary of state; and of each associate judge in the office of the clerk of the county for which he shall have been elected.*

Style of court.

SECT. 4. Each court held in the respective counties of said circuits, shall be called and styled "———— circuit court," according to the name of the county in which it may be holden.

When held.

SECT. 5. The circuit court of each county shall be holden therein at such times and places as shall be fixed by law.

What judge or judges may hold court.

SECT. 6. The president judge alone, in the absence of the associate judges, or the president judge and one of the associates, in the absence of the other, are competent to hold a court; and the two associate judges, in the absence of the president judge, shall be competent to hold a court except in capital cases and cases in chancery.†

Jurisdiction. Constitution, art. 5, sect. 3.

SECT. 7. Such circuit courts, in their respective counties, shall have cognizance of all suits, plaints, pleas, and matters, real, personal, and mixed, and of all civil actions between party and party which shall be legally brought before them.‡

Chancery. Constitution, art 5, sect. 3.

SECT. 8. They shall have cognizance sitting as a court of chancery, of all cases in equity, when the parties have not a plain, adequate, and complete remedy at law, or when any such case is properly determinable in equity, according to the course of proceedings in a court of chancery. §

*As to election and term of office of associate judges, see constitution, article 5, section 7, ante pae 54; page 96, section 1, clause 10; page 97, section 8; page 122, section 1. As to vacancies see constitution, article 5, section 10, ante page 54; and also page 123, section 9, clause 4. Ibid, sections 10, 11, 12, 13; and page 116, section 136, etc.; page 120, section 167.

†If the record show a competent court at the commencement, and no change be afterwards noticed, it will be presumed that the court first named continued throughout. *Morris* v. *The state*, 1 Blackf. 37.

By the constitution, the president judge must be present at the trial of capital cases, but he may be overruled by the associate judges. *Fuller* v. *The state*, 1 Blackf. 63.

‡The circuit court cannot take cognizance of a matter of controversy or suit unless the same be brought before it by process of law or other legal proceedings. *Hoover* v. *Hanna*, 3 Blackf. 48.

If a court, either of law or chancery, have no jurisdiction of the *subject matter* in controversy, it can render no valid judgment or decree upon the merits of the cause. *Brown* v. *Blythe et al.*, 4 Blackf. 249.

Whether the declaration shows a sum due, sufficiently large to give the circuit court jurisdiction, depends not upon the amount of any one particular item but upon the whole amount demanded in the declaration. *The state bank of Indiana* v. *Brooks*, 4 Blackf. 485.

If the different charges against a clerk for taking unlawful fees amount, together, to the sum necessary to give the circuit court jurisdiction, the demand may be sued for in that court. *Jones* v. *Buntin*, 1 Blackf. 322.

§That a court of chancery has jurisdiction in those cases where "a plain, adequate, and complete remedy cannot be had at law," is, it is said the apothegm by which the power is limited in every country where the distinction is known between courts of law and equity. The extent of the restriction has been long since defined. It is a technical maxim, adopted by our legislature, in its technical sense, and receives the same interpretation here as elsewhere. *Cram, et al.*, v. *Green, et al.*, 6 Ohio Rep. 429.

The extension of the jurisdiction of courts of law, in modern times, to cases which were formerly subjects of equitable jurisdiction only, has not destroyed the jurisdiction of courts of equity. *Peck, et al., v. Braman, et al.*, 2 Blackf. 141.

When accounts are intricate and difficult, a bill in equity is the more usual and suitable proceeding to compel an account. Ibid.

Courts of equity have no jurisdiction over accounts where there is but one item on a side, or where there is no mutuality of dealing, and a discovery is not required. *Cummins* v. *White, et al.*, 4 Blackf. 356.

An objection that the court has no jurisdiction over the subject matter in controversy may be made at any stage of the suit. Ibid.

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Criminal jurisdiction. Constitution, art. 5, sect. 3,

SECT. 9. Such courts shall have cognizance of all crimes, offences, and misdemeanors of every name and description, committed within their jurisdiction, which shall be legally brought before them, and to hear and determine the same, and pronounce sentence, and award execution according to law, except in those cases cognizance of which is given exclusively to other courts, or justices of the peace.*

Power to issue writs.

SECT. 10. They shall have power to issue and direct writs of mandamus, prohibition, quo warranto, habeas corpus, ne exeat, and all other writs and processes to courts of inferior jurisdiction, and to corporations and individuals, which shall be necessary to the furtherance of justice, and the regular execution of the laws; and to issue and direct all other writs and processes which may be necessary to carry their powers as such courts into effect, according to the course of the common law or of chancery, and the practice and usages of courts, not inconsistent with the constitution and laws of this state.

Court may frame writ.

SECT. 11. Where there shall be occasion for any writ or process for which no form is prescribed by law, the court shall frame a new writ in conformity with the principles of law, and the usage and practice of the state, which writ or process shall be tested and sealed as other writs of process.

Powers as to judgments, decrees, executions, &c.

SECT. 12. The said courts shall have power to award and make all such judgments, sentences, decrees, orders, and injunctions, and to issue all such executions and other writs and processes, and to do all such other acts as may be necessary or proper to carry into full effect all such judgments, sentences, decrees, orders, and injunctions, in conformity with the constitution and laws of this state.

May award writ in criminal cause to another county

SECT. 13. When any person is indicted or otherwise legally charged with any crime, offence, or misdemeanor in one county, and shall remove to, or dwell in, another county, said courts in term, or any judge thereof in vacation, may order a writ, warrant, or other proper process, to be issued by the clerk of the court having jurisdiction, to any sheriff or other proper officer of the county where the person thus indicted or charged may be, to have him arrested and brought before such court for trial.

Subpœnas.

SECT. 14. Said courts, in their respective counties, shall have power to issue subpœnas and all other process to all the counties in the state, to summon or otherwise bring any person or persons before them to testify as witnesses in any cause, action, matter, or proceeding pending in such court, under such penalties as may be prescribed by law with respect to such process.

*Offences punishable by a fine not exceeding three dollars, belong exclusively to the jurisdiction of justices of the peace; other offences punishable by a fine which may be more or less than three dollars, according to circumstances, are cognizable by the circuit court. *The State* v. *Albertson*, 2 Blackf. 251.

As to the jurisdiction of justices of the peace in criminal cases, see chap. 55. Constitution, art. 1, sect. 5, ante p. 42.

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SECT. 15. Said courts shall also have power and authority, whenever it may be necessary, to grant and empower commissions for the examination of witnesses according to the regulations of law. Commissions to take depositions.

SECT. 16. Each circuit court hereby organized shall have a seal devised by the court, a description of which, signed by the judges devising the same, shall be filed by the clerk and recorded. Seal.

SECT. 17. In all new counties where seals for the circuit courts thereof have not been devised, it shall be lawful for the clerks thereof to seal all writs, process, and matters, where the seal of such court shall be required by law, with his own private seal, and the same shall have like force and effect as if it had been sealed with a seal devised by said court. Seals in new counties.

SECT. 18. The said circuit courts respectively shall have full power and authority to administer all necessary oaths and affirmations, and punish by fine and imprisonment, or either, all contempts of their authority and process in any cause or matter before them, or by which the proceedings of the court or the due course of justice is interrupted. May punish for contempts. See chapter 36.

SECT. 19. The said courts shall, from time to time, adopt rules for regulating the practice and conducting business therein, not repugnant to the constitution and laws of this state: and in every thing relating to simplifying, shortening, and expediting the pleadings, proceedings, and decisions of causes, presenting distinctly and fully the point in issue on trials by jury, the diminishing of costs, and the remedying of all abuses and imperfections that may be found to exist in the practice, the rules of such circuit courts shall be in conformity with those prescribed by the supreme court on the same subjects. May adopt rules, &c. Shall conform to rules of supreme court. &c. See ante page 638, section 83.

SECT. 20. Any president judge of a circuit court shall be competent to preside in, or hold any circuit court within any county of this state, the president judge of the circuit to which such county belongs being absent; and said president judge so presiding in or holding such court, may continue the session thereof during any entire term, or during the progress of any trial or trials, or for any less time. * President judge may hold a court in any county.

SECT. 21. Whenever the president judge of any circuit court, from any cause whatever, shall be disqualified from trying, hearing, or proceeding in any suit in chancery pending in said court, such court may appoint some time in the next vacation for the trial, hearing, and determination of such suit. In chancery cause, may hold special term in another circuit.

SECT. 22. The said court shall cause immediate notice thereof to be given to the president judge of any circuit adjoining thereto, whose duty it shall be to attend and preside at and hold such special term, and proceed to hear, try, and determine such suit at the usual place of holding courts in such county at the time fixed by such court. Notice to president judge in such case.

* The supreme court has recognized the constitutionality of this section in the case of *Beauchamp* v. *The state*, Nov. term, 1842.

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By whom such term may be holden.

SECT. 23. Such special term shall be held by such president judge, or by him and the associate judges of such county, or by him and any of them who shall attend.

Powers of such court at special term.

SECT. 24. Such court shall possess, as to such suit, all the powers of, and shall be deemed and taken to be, the circuit court of such county, and may adjourn from day to day, and to such time or times as may be necessary, and shall have the attendance and services of the officers of the circuit court, and shall do all acts and things in relation to the progress, hearing, trial, and determination of such suit, and issue all process and compel obedience thereto, and make and pronounce all orders and decrees, proper and necessary in such cases, as if the same were a regular term of the circuit court of such county.

Appeal, &c.

SECT. 25. Appeals may be taken from, and writs of error brought upon, any judgment, decree, or final determination of said court, and prosecuted in the supreme court, as in other cases.

Compensation.

SECT. 26. The president judge of the circuit court, holding any such special term, shall be allowed the sum of three dollars for each day he may be necessarily engaged therein.

How paid.

SECT. 27. The number of days employed by such president judge, shall be certified by the clerk of such circuit court, and the claim shall be audited by the auditor of public accounts, and paid by the treasurer of state on the auditor's warrant; and the amount thus paid shall be deducted from the salary of the president judge within whose circuit such special term was held.

When chancery cause shall be certified to another circuit.

SECT. 28. When a chancery cause is pending in any circuit court and the president judge is incompetent to hear and determine the same, by reason of interest, or prejudice, or otherwise, such cause may be transferred to some convenient circuit court of a circuit adjoining thereto, and such court to which such cause is thus transferred, shall have the same power over such cause and the proceedings therein, as if such cause had been originally instituted in such court.

Clerk shall transmit papers.

SECT. 29. When it becomes necessary to transfer a cause as provided in the preceding section, the clerk shall make a transcript of the minutes, orders, and proceedings, and shall transmit the same, duly certified and sealed, with the pleadings and papers filed in such cause, by some safe hand, to the clerk of the court to which the same are to be transferred, who shall file the same and docket the cause among the chancery causes pending in such last mentioned court.

Clerk responsible. See ch. 49.

Fee of transmission.

SECT. 30. The clerk transmitting such transcript, pleadings, and papers, shall be responsible for the safe delivery thereof, and the fee to the person by whom the same are transmitted shall be the same which is allowed in cases of a change of venue, to be paid by the complainant before the transcript, pleadings, and papers are delivered by such clerk out of his office.

Cases in which chancery suit may be com-

SECT. 31. Where any president judge is incompetent as aforesaid, any person who may wish to institute a suit in

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chancery, of which such judge would otherwise be competent to take jurisdiction, may institute and prosecute such suit in some convenient circuit court of a county in some adjoining circuit; and such circuit court shall take cognizance thereof, and hear and determine the same in like manner as other chancery causes.

Commenced in another circuit.

SECT. 32. The respective circuit courts while in session and the president judges thereof, within their respective circuits, and the associate judges in their counties respectively, shall have full power and authority, and it shall be their duty to act as conservators of the peace, and to take all necessary recognizances and obligations for good behaviour, to keep the peace, or to answer any offence or criminal charge in the court having jurisdiction thereof.

Judges conservators of the peace.

SECT. 33. There shall be no discontinuance of any suit, process, matter, or proceeding whatever, returnable to or pending in any circuit court, although a quorum of judges shall fail to attend at the commencement, or any other day of the term.

Failure to hold court not to affect causes.

SECT. 34. If a quorum as aforesaid shall not attend, any judge or sheriff in attendance, or in the absence of all of them, the clerk of said court may adjourn the same for two days successively, and if a quorum shall not attend on the third day, or having attended one day, shall fail to attend on a subsequent day of the term, the court shall stand adjourned until court in course.

Court adjourn if judges fail to attend.

SECT. 35. If a court shall not sit in any term, all suits and matters depending in said court shall stand continued until the next succeeding term.

Causes continued, if no court.

SECT. 36. If at the end of the term of any court, any suits or matters depending therein are undetermined, the same shall stand continued until the next succeeding term.

Causes not tried continued.

SECT. 37. If at any term of a court there shall be no sheriff nor coroner to attend said court, or if the sheriff and coroner shall both be interested, or otherwise incapacitated from serving, such court shall have power to appoint an elisor to serve for such term or occasion.

Elisors.

SECT. 38. Such elisor, when so appointed, shall take the like oath, and give like bond and surety as is required of sheriffs, and shall thereupon have the same power and authority to execute and perform all the duties of the sheriff, which shall relate to the service for which he may be thus specially appointed, and shall be governed by the same rules and restrictions, and be subject to the like penalties and liabilities.

Their oath, bond, &c.

SECT. 39. It shall be the duty of the clerk of the circuit court to draw up each day's proceedings at full length, and the same shall be publicly read in open court, and corrected when necessary; after which, they shall be signed by the president judge, or if he is absent, by the associate judges; and no process or execution shall issue on any judgment or decree of the court until it has been so read and signed.

Minutes of the court.

How signed.

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PART III.

ARTICLE II.

Of the clerks of the circuit courts.

SECTION

40. Bond of clerk.
41. Bond shall be recorded.
42. If clerk recorder, bond to be filed with secretary of state.
43. Vacancies.
44. Office to be kept at the county seat; office hours.
45. Duties.
46. Shall attend courts.
47. Deputies.
48. Office and record books.
49. Filing papers, &c.
50. Shall preserve books and papers, &c.
51. Record books of law and chancery cases.
52. Causes which shall be recorded.
53. When record dispensed with, papers, entries, &c. may be produced in evidence, &c.
54. Time within which causes must be recorded.

SECTION

55. President judge to inspect clerk's office.
56. Clerk may administer all oaths, &c.
57. May administer oaths of office, &c.
58. Shall register the names, &c. of certain officers, &c.
59. Shall keep his office in the building provided.
60. To be allowed his account for books, &c.
61. Same as to clerk and sheriff.
62. Allowances, to specify articles, &c.
63. Allowances to be certified by clerk to county auditor.
64. Account of jury fees.
65. Clerk shall attest papers of revolutionary soldiers without charge.
66. Also papers of soldiers of the last war.

Bond of clerk.

SECT. 40. The clerk of the circuit court shall give bond payable to the state of Indiana in the penal sum of ten thousand dollars, with two or more sureties, to be approved by the associate judges of his county, or if there be not two associate judges then in office, by the president judge of the circuit, with condition for the faithful discharge of the duties of his said office according to law, and that he shall seasonably enter and record all judgments, decrees, orders, and proceedings of said court, and also pay over all moneys which may come into his hands for the payment or in discharge of any judgment, decree, or order of said court, or in any other manner by virtue of his said office, to such person or persons as by law shall have a right to demand or receive the same, and that he will do and perform all other acts and duties which may be required of him by law.*

Shall be recorded, &c.

SECT. 41. Said bond shall be recorded in the recorder's office of the proper county, within twenty days after its execution, and shall, by order of the court, be spread upon its records, and the original shall be filed and kept in the recorder's office of the county.

If the clerk recorder, bond to be filed with secretary of state.

SECT. 42. But where the clerk is also the recorder of the county, his bond shall be forwarded by said associate judges or president judge to the secretary of state, by whom the same shall be filed and carefully preserved.

* As to election and tenure of office, see constitution, art. 5, sec. 8, ante page 54; page 96, sec. 1, clause 10; page 97, sec. 2—sec. 8; page 122, sec. 1. As to oath and bond, see pp. 108, 109, sec. 77—sec. 87. As to the bond, when the clerk is also recorder, see sec. 42 of this chapter.

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ARTICLE 2.

Vacancies.

SECT. 43. Vacancies in the office of clerk shall be supplied as provided in the seventeenth article of the fourth chapter of these Revised Statutes.*

Office at the county seat. Office hours.

SECT. 44. The clerk of the circuit court shall keep his office at the county seat, and shall keep the same open for the transaction of business every day in the year, Sundays and the fourth of July excepted, from the hour of nine o'clock of the forenoon until three o'clock of the afternoon, during which time, and at all other times within reasonable hours, when specially required by persons having business to transact in said office, he shall give attendance in person or by deputy.

Duties.

SECT. 45. Clerks of the circuit courts shall do and perform all the duties as such clerks which are required of them by law.

Shall attend courts.

SECT. 46. They shall attend their respective courts during the terms thereof, in person or by deputy.

Deputies.

SECT. 47. Each such clerk, by writing under his hand, may appoint some suitable person as his deputy, who shall take a like oath as is required of the clerk; and whenever such clerk is unable to attend to the duties of his office, or is absent, the deputy so appointed may perform all the duties pertaining to such office, such clerk being liable in all cases for the acts of all persons who shall act as his deputies, whether thus specially appointed or not.†

Office and record books.

SECT. 48. Such clerk shall procure for his office, and the use of the court, all the necessary blank books, well bound for the complete records of all causes, suits, plaints, and proceedings determined in said court, and for all other purposes for which such books are required in his office.

Filing papers, &c.

SECT. 49. All records, pleadings, and papers of every description required to be deposited or filed in his office, shall be filed by such clerk, and the time of such filing accurately endorsed by him thereon, under his hand.

Shall preserve books, papers, &c.

SECT. 50. All books, records, documents, and papers of any kind required to be filed, deposited, or kept in the office of said clerk, and all records, papers, documents, and manuscripts belonging or appertaining to his office, or to said circuit court, or other court of which he may be clerk, or to any cause or proceeding which has been decided or is pending therein, shall be carefully kept and preserved by him.

Record books of law and chancery causes.

SECT. 51. Such clerk, whenever required so to do by a rule of court, shall provide two sets of record books, in one of which he shall record all chancery causes, and in the other all other causes and proceedings required by law to be recorded.

Causes to be recorded.

SECT. 52. He shall make a full and complete record, in the proper record book, of all causes and proceedings ended and determined in said circuit court, except that where any nolle prosequi or discontinuance is entered by any prosecuting attor-

* Ante page 119, sec. 156, 157, 158. As to tenure of office of clerk appointed or elected to fill a vacancy, see ante page 120, sec. 163, 167; constitution, art. 5, sec. 10, ante page 54.

† See ante page 109, sec. 85.

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ney upon any presentment or indictment, or where the sole defendant, or all the defendants in any presentment or indictment are acquitted, and the offence charged is punishable by fine or imprisonment in the county jail; and also where in any civil action a non-suit is suffered, or where the cause is dismissed without a trial, it shall not be necessary to make any record thereof.*

When record dispensed with, papers, entries, &c. may be produced in evidence, &c.

SECT. 53. In every case in which such complete record is dispensed with, the production of the papers and pleadings, and of the minutes, entries, orders, and judgment relating thereto, on file, or entered in the order book, minute, and entry books of such court, may be produced and shown in said court, and shall have the same force and effect in evidence, or otherwise, as the record thereof would have; and a transcript thereof, duly certified and sealed, as a full and complete transcript and copy of all such papers, pleadings, minutes, entries, orders, and judgment of the court relating to said cause, shall be of the same force and effect in evidence, or otherwise, as if the same were the transcript of a full and complete record of such cause.

Time within which causes must be recorded.

SECT. 54. The clerk of the circuit court shall cause all cases which have been determined, and which are proper to be recorded in the books of complete records to be recorded before the commencement of the term of the court next after the determination of every such case.

President judge to inspect clerk's office.

SECT. 55. It shall be the duty of the president judge, once every year, to examine the office of each clerk in his circuit, and report to the first circuit court of the county held thereafter, setting fourth in such report the condition of the papers and records in such office, and pointing out any deficiencies or neglect of duty that may appear to exist, which report shall be spread upon the records of such court.

Clerk may administer all oaths, &c.

SECT. 56. Whenever any oath, affirmation, or affidavit is authorized or required by law, or is necessary in the progress of any cause, suit, matter, or proceeding in the circuit court to be taken by any party, his agent, attorney, or other person in his behalf, or which may be necessary in the discharge of the duties of clerk; such clerk shall in person, or by deputy, have full power and authority to administer such oath or affirmation.

May administer oaths of office, &c.

SECT. 57. Such clerk shall have full power and authority to administer all oaths to support the constitution of the United States and this state, and oaths of office required of all officers by the constitution and laws of this state.

Clerk shall register the names, &c. of certain officers.

SECT. 58. The clerk of the circuit court shall procure a book, in which shall be registered the names of the justices of the peace, sheriff, coroner, and constables of his county, when the same were commissioned, when qualified, the date of their respective official bonds, and names of the sureties thereto, and in case of justices of the peace, when their term of office shall expire; and when a vacancy in any of said offices shall take

* This section is altered by a law passed at the same session, and printed with the laws appended to the Revised Statutes.

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place, he shall also note the time, as near as may be, when the same occurred; and for such service, he shall receive from each of said officers the sum of fifty cents, to be paid when they shall qualify.

Shall keep his office in the building provided.

SECT. 59. Whenever the board of county commissioners shall have caused to be erected for the use of their county, a suitable fire proof building, it shall be the duty of the clerk of the circuit court forthwith to deposite and keep in said building all papers, books, documents, and records, appertaining to his office.

To be allowed his account for books, &c.

SECT. 60. In all cases in which the clerk shall have purchased blank books and stationary necessary for the business of his office, he shall, when the same is not otherwise provided for, present his account therefor to the board of county commissioners, who shall allow the amount, or so much thereof as shall be just and reasonable.

Same as to clerk and sheriff.

SECT. 61. The circuit court shall allow to the clerk of said court, such sums as shall appear reasonable, for the requisite blank books and stationary furnished by him for the use of said court, and to the sheriff and other persons such like reasonable sums for fuel, and necessary articles furnished, and for extra services during the term of the court.

Allowances to specify articles, &c.

SECT. 62. The specific articles furnished or services performed for which such allowances are made, shall be entered in the book containing the proceedings of said court.

To be certified by the clerk to the county auditor.

SECT. 63. The clerk of the circuit court shall certify all such allowances to the county auditor, who shall thereupon draw his warrant upon the county treasurer by whom the same shall be paid.

Account of jury fees.

SECT. 64. It shall be the duty of the said clerk, on the first Mondays in January and July in each year, to prepare from the returns of the proper officers, a detailed statement of all jury fees collected during the preceding half year, and deliver the same forthwith to the treasurer of his county, and shall also make return of all such jury fees which may have been collected since the first day of January, A. D., 1830, and which may have been overlooked or not returned.

Shall attest papers of revolutionary soldiers without charge.

SECT. 65. Whenever it shall be necessary to perfect the evidence, papers, or testimonials of services, of any person claiming to have been a revolutionary soldier, it shall be the duty of the clerk of the circuit court to attest and seal the same; and he shall also, whenever requested, attest all proper certificates, and fix said seal to any paper or instrument which may be necessary to any revolutionary soldier in drawing his pension; and for any of the above specified services, or any other service or duty in relation thereto, he shall not be allowed to charge, take, or receive any fee or reward.

Also papers of soldiers of the last war.

SECT. 66. The provisions of the preceding section shall apply to the officers and soldiers of the last war with Great Britain who are entitled to pensions.

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PART III

ARTICLE III.

Of sheriffs and coroners.

SECTION
67. Duties of sheriff.
68. Clerk shall notify sheriff of his commission.
69. Bond of sheriff.
70. Bond shall be recorded.
71. Oath.
72. Conservators of the peace.
73. General provisions as to duties of sheriff.
74. His duty on arresting offender on view, etc.
75. Fees in such case.
76. Shall serve all process not otherwise provided for.

SECTION
77. Deputies.
78. Appointment to be in writing.—Oath.
79. Sheriff may take bond of deputy.
80. Posse comitatus.
81. Coroner—his bond and oath.
82. Duties as conservator of the peace, etc.
83. When he shall perform duties of sheriff, etc.
84. May commit sheriff to jail of his county.

Sheriffs.

Duties of sheriff.

SECT. 67. The sheriff chosen in and for each county shall be the sheriff of the circuit court thereof, and shall do and perform all the duties required of him by law.

Clerk notify sheriff of his commission.

SECT. 68. It shall be the duty of the clerk of the circuit court, on the receipt of the commission of the sheriff of the county, to give notice thereof to the person entitled thereto.

Bond of sheriff:

SECT. 69. The clerk of the circuit court shall take from the sheriff thus commissioned a bond in the penal sum of five thousand dollars, with two or more sureties to be approved by the associate judges of the proper county, payable to the state of Indiana, with condition for the faithful discharge of his duties according to law, and for the safe keeping and delivering over, according to law to the proper persons, all sums of money which shall come into his hands by virtue of his office. *

Shall be recorded.

SECT. 70. Such bond, when thus approved, shall be recorded in the office of the recorder of such county and filed in the office of the clerk by whom the same was taken; and such clerk shall transmit a certified copy thereof, sealed with the seal of the circuit court, to the secretary of state, to be by him filed and preserved.

Oath.

SECT. 71. Before entering on the duties of his office, such sheriff shall take the oaths required of officers by the constitu-

* Debt against a sheriff and his sureties on a bond dated in March 1820, conditioned for the faithful discharge of the sheriff's duties until the then next *August* election and until his successor should be elected and qualified. The declaration assigned as a breach that the sheriff had failed to pay over, etc., the revenue of the county *for the year* 1822, without an averment that no successor to the sheriff had been elected. *Held*, that the declaration contained no cause of action against the sureties.

Although the sheriff, in such case, may have been elected his own successor, and may have neglected to qualify under the new appointment, still his sureties in the bond on which the suit was brought, are not liable for his acts after he had received his new commission. *Rany et al.* v. *The Governor*, 4 Blackf. 2.

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tion and laws of this state before the clerk of such circuit court, who shall endorse the same on the commission and file a copy of such oath in the clerk's office; and such commission thus endorsed shall be sufficient authority to such sheriff to undertake and perform all the duties that belong to his office.* ARTICLE 3.

SECT. 72. Sheriffs shall be conservators of the peace in their respective counties. Conservators of the peace.

SECT. 73. It shall be the duty of each sheriff, within the county for which he shall have been chosen, General provisions as to duties of sheriff

1. To arrest without process, all persons who, within his view, shall offend against the laws of this state, by breaking or disturbing the peace, or committing any offence punishable by the criminal laws of this state, and to take the person or persons thus arrested before the nearest competent justice of the peace of his county, and detain him in his custody until the cause of such arrest can be investigated and determined before such justice of the peace. To arrest offenders.

2. To prevent, quell, and suppress all affrays, breaches of the peace, riots, routs, and insurrections which may come to his knowledge. To suppress riots, &c.

3. To pursue and commit to the common jail of the county all felons and traitors. To pursue and commit felons.

4. To execute all writs, warrants, and process of any kind, which, by law, shall appertain to the duties of his office, and which shall be directed to him by legal authority. To execute process.

5. To attend all courts of record at their respective terms or sessions in his county, either in person or by deputy legally appointed and qualified. To attend all courts of record

6. He shall have the custody of the jail of his county and the prisoners in the same; and Keeper of the jail.

7. Shall do and perform all other acts and duties which may be required of him by law.

SECT. 74. When any person shall be arrested by the sheriff and taken before any justice of the peace, according to the provisions of the first clause of the last preceding section, such sheriff shall have power to serve all process issued by the said justice, and to execute and perform all orders made by him, which are necessary for the trial of such person or persons; and such justice shall hear and determine said cause in like manner as if such person or persons had been brought before him on a warrant duly issued by himself. His duties on arresting offender on view &c.

SECT. 75. The sheriff, for all such services as required in the last section, shall receive the same fees which are allowed to constables in like cases. Fees in such case.

SECT. 76. Whenever any court, judge, or judges thereof, or any other tribunal or officer shall be authorized and duly empowered to issue any writ, warrant, or process of which execu- Shall serve all process not otherwise provided for.

* As to election of sheriff and tenure of office, see constitution, article 4, section 25, ante page 52. Ante page 96, section 1, clause 10; page 97, section 10; page 122, section 1. As to oath, see ante page 108, section 77; and also section 84, clause 2. As to vacancies, see ante page 116, section 136; page 119, section 155; and also page 120, sections 163, 168.

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PART III.

tion or service is required by law, and no special provision is made by law as to the officer who shall execute the same, such writ, warrant, or process shall be executed by the sheriff of the county within which the same is to be executed.

Deputies.

SECT. 77. Every sheriff may appoint such and as many deputies as he may find necessary; and persons may be deputed by any sheriff to do any particular acts pertaining to the duties of such office.

Appointment to be in writing

Oath.

SECT. 78. Every appointment of a deputy sheriff shall be in writing under the hand of the sheriff, and shall be filed in the office of the clerk of the circuit court; and such deputy, before he enters on the duties of his appointment, shall take a like oath as is required of the sheriff; but the provisions of this section shall not extend to appointments to do particular acts pertaining to the duties of such sheriff.*

Sheriff may take bond of deputy.

SECT. 79. Such sheriff may take bond to himself, with such sureties as he may require, of any person whom he may appoint deputy sheriff; but every sheriff and his sureties shall be liable and accountable in all cases for the acts of each and all his deputies.

Posse comitatus.

SECT. 80. Every such sheriff or his deputy duly appointed and qualified as aforesaid, shall have full power and authority to call to his aid the power of the county to assist him in preventing, quelling, and suppressing affrays, breaches of the peace, riots, and insurrections; in arresting offenders against the laws, and to assist in the execution of his office.

Coroner.

Coroner, his bond and oath.

SECT. 81. Every person chosen coroner of any county shall give like bond and in like manner as is required of the sheriff of the county, and shall also take the oaths prescribed by the constitution and laws of this state to be taken by officers, before he shall enter upon the discharge of any of the duties of his office.

Duties as conservator of the peace.

SECT. 82. Every coroner, within his county, shall be a conservator of the peace, and shall perform like duties and possess like powers, in keeping the peace, and in arresting offenders against the laws of the state, and in preventing, quelling, and suppressing affrays, breaches of the peace, riots, and insurrections which may come to his knowledge, which belong to and are vested in sheriffs.

When he shall perform duties of sheriff, &c.

SECT. 83. The coroner shall perform the duties of sheriff in all cases where the sheriff is interested or otherwise incapacitated from serving; and also in case of a vacancy, by death, resignation, or otherwise, in the office of sheriff, the coroner shall discharge the duties of such office until a sheriff is appointed or elected and qualified as required by law.

* As to deputy filing certified copy of his oath, see ante page 109, sections 85, 92.
If it appear that a person has acted generally as a deputy sheriff, with the sheriff's knowledge and consent, the sheriff is liable for the official acts of such person, though he may not have given him any express authority. *Bosley* v. *Farquar et al* 2 Blackf. 61.

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ARTICLE 4.

SECT. 84. All writs and warrants commanding and requiring the arrest of the sheriff of any county, shall be served by the coroner or other person to whom the same may be legally directed; and such sheriff shall be committed to the jail of the county of which he is sheriff by the coroner; and such coroner during the continuance of the imprisonment of such sheriff, shall have the custody of such jail and of the prisoners therein, and shall discharge the duties of sheriff until such sheriff is legally discharged out of such custody.

May commit sheriff to jail of his county.

ARTICLE IV.

Of masters in chancery.

SECTION
85. Oath of master in chancery.
86. Duties.
87. Shall have power to administer oath —may subpœna witnesses.
88. Duty of sheriff in such cases.
89. Fees, &c.

SECT. 85. Every person appointed a master in chancery shall take the oaths required of officers by the constitution and laws of this state, before he shall proceed to discharge any of the duties of his said office; and such oaths shall be entered at full length on the order book of the court by which such master is appointed.*

Oath of master. *See chapter 4, articles 10 and 14.

SECT. 86. Every such master in chancery shall perform, under the direction of the court, all the duties which, according to the practice in chancery, appertain to the office.

Duties.

SECT. 87. Such master in chancery shall have power to administer all oaths and affirmations which are required by law, and to take and certify affidavits and depositions, to issue subpœnas for witnesses whose testimony is to be taken before him, and shall have the same power to compel the attendance of witnesses, and to punish for contempts, as is given to justices of the peace.

Shall administer oath, and may subpœna witnesses.

SECT. 88. All subpœnas and process necessary to the exercise of the duties of the office of a master in chancery, shall be executed and returned by the sheriff, or any constable of the county to whom the same may be directed.

Duties of sheriff, &c. in such case.

SECT. 89. Said masters in chancery, for administering oaths, and taking affidavits and depositions, and such like services, shall be allowed the same fees as other officers for similar services; and where no specific fees are specified, the court shall make such allowance for the service performed as shall be just and reasonable; and all such costs shall be taxed as a part of the costs in the case in which they may have accrued.

Fees, &c.

NOTE.—See further as to duties, &c. of masters in chancery, chapter 46.

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PART III.

ARTICLE V.

Of attorneys and counsellors at law.

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90. Attorneys, by whom licensed.
91. Effect of license.
92. Certificate of moral character.
93. Roll of attorneys.
94. Attorney not enrolled shall not practice.
95. Oath.
96. Certificate of oath.
97. Power of court over attorneys.
98. Notice to attorney of charges against him.
99. Effect of striking name from the roll.
100. Power of court to punish attorney.
101. Certain officers not allowed to practice law.
102. Foreign attorneys.

SECTION
103. Penalty for practising law without license.
104. For forging license.
105. Parties may appear in person.
106. Summary proceedings against attorney for failing to pay over moneys.
107. Judgment of the court.
108. How attorney may be restored.
109. Attorney liable for 10 per cent. damages.
110. May retain his fees.
111. Court may appoint attorneys to prosecute an attorney for mal-conduct, &c.
112. Their duties.
113. Penalty for refusing.
114. Appeal and writ of error allowed.

Attorneys, by whom licensed.

SECT. 90. No person shall be permitted to practise as an attorney and counsellor at law, or to commence, conduct, or defend any action, suit, or plaint in which he is not a party concerned, in any court of record within this state, either by using or subscribing his own name or the name of any other person, without having previously obtained a license for that purpose, from two of the judges of the supreme court, or from two circuit judges.

Effect of license.

SECT. 91. Such license shall constitute the person receiving the same an attorney and counsellor at law, and shall authorize him to appear in all superior and inferior courts of record and not of record, if the license be given by such judges of the supreme court, and in all the circuit and inferior courts of record and not of record, if the license be given by such circuit judges, and to practise as such attorney and counsellor at law, according to the laws and customs governing such courts, for and during his good behavior in the said practice, and to demand and receive therefor such fees and compensation as may be just and reasonable.

Certificate of moral character.

SECT. 92. No person shall be entitled to receive a license as aforesaid, until he has obtained a certificate from the circuit court of some county of his good moral character.

Roll of attorneys.

SECT. 93. It shall be the duty of the clerks of the supreme and circuit courts, respectively, to make and keep a roll or record on good paper, stating at the commencement thereof that the persons whose names are thereon written, have respectively been regularly licensed and admitted to practise as attorneys and counsellors at law within this state, and that they have duly taken the oath to support the constitution of the United

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States and of this state, and that they will faithfully and honestly discharge the duties of an attorney and counsellor at law. ARTICLE 5.

SECT. 94. No person whose name is not subscribed to or written on the said roll, with the day and year when the same was subscribed thereto or written thereon, shall be suffered or admitted to practise as an attorney or counsellor at law, under the penalty hereinafter mentioned. Attorney not enrolled shall not practise.

SECT. 95. No person's name shall be entered upon such roll, nor shall he do any act appertaining to the office of an attorney or counsellor at law, until he has taken the oaths specified in the preceding ninety-third section. Oath.

SECT. 96. The person administering such oaths shall certify the same on the back of the license, which certificate shall be a sufficient voucher to the clerk of the court to enter on such roll the name of the person of whom such certificate is made. Certificate of oath.

SECT. 97. The supreme and circuit courts, in open court, shall have power to strike the name of any attorney or counsellor at law from the rolls for mal-conduct in his office. Power of court over attorneys.

SECT. 98. But every attorney, before his name is struck off the roll, shall receive a written notice from the clerk of the court, stating distinctly the grounds of complaint, or the charges exhibited against him; and he shall, after such notice, be heard in his defence, and be allowed reasonable time to collect and prepare testimony. Notice to attorney of charges against him.

SECT. 99. Every attorney whose name shall at any time be struck off the rolls by order of the court, shall be considered as though his name had never been written thereon, until such time as the said judges, in open court, shall authorize him again to subscribe the same. Effect of striking name from the roll.

SECT. 100. The judges of the supreme court, and the judges of the several circuit courts, shall have power to punish in a summary way, according to the rules of law and the usages of courts, any and every attorney and counsellor at law, who shall be guilty of any contempt in the execution of his office; and every attorney and counsellor at law receiving money for the use of his client, and refusing to pay the same over when demanded, may be proceeded against in a summary way, by motion. Power of court to punish attorney.

SECT. 101. No person shall be permitted to prosecute as an attorney or counsellor at law, by instituting, defending, or conducting any action, plaint, suit, or plea, in any court whatever, who holds a commission as a judge of the supreme or circuit courts, and no person who holds a commission of sheriff or coroner, or who acts as a deputy sheriff, jailor, or constable shall be permitted to practise as an attorney or counsellor at law in the county in which he has been commissioned or appointed, nor shall any clerk of the supreme or circuit courts be permitted to practise as an attorney or counsellor at law in the court of which he is clerk. Certain officers not allowed to practise law.

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Foreign attorneys.

SECT. 102. Any person producing a license or other satisfactory voucher, showing that he has been regularly admitted an attorney at law, in any court of record within the United States, and that he is of good moral character, may be admitted to an examination for the degree of an attorney and counsellor at law; and the courts of this state may permit an attorney and counsellor at law of another state, who is not a resident of this state, to appear at any term of such court and practise therein as an attorney and counsellor at law during such term, upon his taking an oath for the faithful discharge of his duties.

Penalty for practising law without a license.

SECT. 103. If any person, not licensed as aforesaid, shall receive any money or other species of property as a fee or compensation for services rendered or to be rendered by him, as an attorney or counsellor at law, all moneys so received may be recovered back, with costs of suit, by an action or actions, for money had and received; and such property, with costs of suit, may be recovered in an action of replevin, or the value thereof may be recovered, with costs of suit, by the person delivering or conveying the same, by an action of trover; and the person receiving such money or property shall forfeit threefold the amount or value thereof, to be recovered with costs of suit, before any justice of the peace, if within his jurisdiction; or if not, then before any court of record by action of debt qui tam, the one half to the use of the person who may sue for the same, and the other half for the use of common schools in the county in which such suit shall be brought.

For forging license.

SECT. 104. If any person or persons shall sign, or cause to be signed, the name of any circuit judge, or either of the supreme judges, to any certificate or license provided for by this article, with intent to deceive any person or persons, such person or persons so offending shall be deemed guilty of forgery, and may be prosecuted and punished accordingly.

Parties may appear in person.

SECT. 105. Plaintiffs shall have the privilege of prosecuting, and defendants the privilege of defending in their proper persons; and nothing herein contained shall be so construed as to debar them therefrom.

Summary proceeding against an attorney for failing to pay over moneys, &c.

SECT. 106. In all cases where any attorney and counsellor at law shall have heretofore collected, or shall hereafter collect, for his employer, any money, or received any property, securities, or things in action, and shall neglect or refuse to pay or deliver the same over, on being requested so to do by any person authorized to receive the same, such employer, his agent, or attorney, may file in the office of the clerk of the circuit court where such collection was made, or where such property, security, or thing in action was taken or received, or refused to be paid over or delivered, charges against such attorney and counsellor at law, setting forth therein the amount of money collected, or the description of such property, security, or thing in action, and from whom the same was collected, taken, or received, and shall forthwith notify such attorney and counsellor

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at law thereof, at least ten days before the sitting of the court before whom such charges are to be tried.*

Judgment of the court.

SECT. 107. If such court, on hearing the allegations and proofs submitted to them by the parties, shall be of opinion that such party has collected money, as such attorney and counsellor at law, and after reasonable request has refused to pay the same over to the person authorized to receive the same, or has received or taken such property, security, or thing in action, and refuses to deliver or account therefor, such court shall suspend such attorney and counsellor at law from the practice of law in any of the courts of this state, for any length of time in the discretion of the court, and may render judgment against such attorney for the amount of money by him thus collected, or may make such order as may be just respecting such property, security, or thing in action, and may commit such attorney to prison until such order is complied with.

How attorney may be restored.

SECT. 108. Any succeeding circuit court holden in and for the county where such judgment of suspension shall have been entered, may revoke the same, and reinstate such attorney and counsellor at law in all the privileges taken from him by such suspension.

Attorney liable to ten per cent. damages.

SECT. 109. Any attorney and counsellor at law having collected money as aforesaid, and having refused to pay the same over to any person authorized to receive the same, within a reasonable time after request, shall pay to the person injured ten per centum in addition to the sum so collected and withheld as aforesaid.

May retain his fees.

SECT. 110. Such attorney and counsellor at law shall be permitted to retain in his possession a reasonable fee for his services as such, together with all costs and charges by him expended for and on behalf of his employer.

Court may appoint attorneys to prosecute an attorney for mal-conduct, &c.

SECT. 111. Whenever a complaint shall be filed before any court, or whenever any court shall have sufficient reason to believe that any attorney of such court has been guilty of any conduct for which his name should be stricken from the roll of attorneys, such court shall name an attorney or attorneys of the court to investigate the matter.

Their duties.

SECT. 112. It shall be the duty of such attorney or attorneys forthwith to enquire into such matter; and they shall prepare and file charges specifying the cause of complaint, if any be found to exist; and such charges shall be heard and determined as above provided.

Penalty for refusing.

SECT. 113. Any attorney or attorneys thus named by the court, who shall fail or refuse to comply with the provisions of the last two sections, shall be deemed guilty of a contempt, and shall be punished therefor as in cases of other contempts.

* *A*, an attorney received a note from the payee for collection, and without the payee's knowledge delivered it to *B*, another attorney, to collect. *B* collected the money, and failed to pay the same to the payee. *Held*, that *A* was liable to the payee for the money collected. *Pollard* v. *Rowland*, 2 Blackf. 22.

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Appeal and writ of error allowed.

SECT. 114. In all proceedings against an attorney and counsellor at law, wherein a judgment of any kind for a contempt or official mal-conduct shall be rendered against him, he may prosecute an appeal or writ of error to the supreme court of the state, subject to the same regulations and restrictions as are provided in regard to actions at law.

CHAPTER 39.

OF PROBATE COURTS.

SECTION

1. Judge.
2. Term of office. Oath.
3. Style of court.
4. Seal.
5. Exclusive jurisdiction.
6. Concurrent jurisdiction.
7. Where subject matter is in two or more counties, what probate court shall have cognizance, &c.
8. As to cases of concurrent jurisdiction, what court shall have cognizance.
9. If judge interested, circuit court to have cognizance.
10. When cause shall be transferred to circuit court.
11. Powers, how exercised by probate court.
12. Process, how executed.
13. Chancery powers.
14. Change of venue.
15. Issues of fact.
16. Venire.
17. Jury.
18. Jurors compelled to attend.
19. Jurors failing to appear, court to direct how to call others.
20. Trial by jury, how governed.
21. Judgment, &c. on verdict; new trial.
22. Witnesses.
23. Process, how tested and sealed.
24. What writs to issue of course.

SECTION

25. What writs must be ordered by the court; return of subpœnas.
26. Citations, when returnable.
27. Other process, when returnable.
28. Power of court as to issuing and enforcing return of process; who shall execute process.
29. Process to be served twenty days before court.
30. Power of the court to enforce its judgments, decrees, orders, rules, &c.
31. Effect of judgments and decrees as liens.
32. Stay of execution.
33. Appeal on writ of error.
34. Proceedings, &c. in the superior court.
35. Appeal; writ of error; supersedeas.
36. When appeal to circuit court shall be certified to supreme court.
37. Positive duty of probate court to cite executors, &c. to account, &c.
38. Shall examine bonds, &c.
39. May remove guardian.
40. Terms of court when held.
41. When held, if circuit court or county board meet at the same time.
42. Clerk and sheriff.
43. Duty of clerk.
44. Shall keep a docket; complete record.
45. Sheriff; duties, &c.

Judge.

SECTION 1. There shall be organized in each county within this state, a probate court, consisting of one judge.

Term of office.

SECT. 2. Each probate judge shall hold his office for seven years, and until his successor is chosen and qualified, if he shall so long behave well, shall be commissioned by the governor, and before entering upon the discharge of any of the duties of

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his office, shall take the oaths to support the constitution of the United States and of this state, and the oath of office.* ARTICLE 1. Oath.

SECT. 3. Each probate court shall be a court of record, and shall be called and styled "The Probate Court of —— County," according to the name of the proper county within and for which such court may be organized. Style of court.

SECT. 4. Each probate court shall have a seal, to be devised by the judge, who shall cause a description thereof to be recorded among the records of the court. Seal.

SECT. 5. Each probate court within and for the county for which it is organized, shall have original and exclusive jurisdiction in all matters relating to the probate of last wills and testaments, granting of letters testamentary, of administration, and of guardianship; of all matters relating to the settlement and distribution of decedents' estates, and the personal estates of minors; the examination and allowance of the accounts of executors and administrators, and of the guardians of minors, except where, in special cases, concurrent jurisdiction is given by law to some other court. Exclusive jurisdiction.

SECT. 6. In the following cases the circuit and probate courts shall have concurrent jurisdiction: Concurrent jurisdiction.

1. In all suits at law or in equity, upon all demands or causes of action in favor of or against heirs, devisees, legatees, executors, administrators, or guardians, and their sureties and represenatives.

2. In the partition of real estate.

3. In the assignment of dower.

4. The appointment of a commissioner to execute a deed on any title bond given by a deceased obligor.

5. To authorize guardians to sell and convey any real estate of their wards, in order to reduce the same to assets for the payment of the debts and liabilities of the ward, or debts and liabilities justly chargeable on their estates, and to provide for the wants, education, support, or interests of minors, and the care and support of idiots and lunatics; and,

6. The appointment of guardians of the persons and estates of insane persons and idiots.

SECT. 7. When the subject matter of any suit or proceeding of which the probate court may have jurisdiction, shall be situated in two or more counties, the probate court which shall first take cognizance thereof, by the commencement of proceedings, shall retain the same throughout exclusively. Where subject matter is in two or more counties.

SECT. 8. In all suits and proceedings of which the circuit and probate courts shall have concurrent jurisdiction, the court which shall first take cognizance thereof shall retain such cognizance exclusively while the same may be pending in such court. Court first taking cognizance shall retain it.

SECT. 9. If in any case cognizable in the probate court, the judge thereof may be or shall have been interested, either as If judge interested, &c., circuit court to

*As to election, &c. of probate judges, see ante page 97, sec. 2, sec. 9; page 122, sec. 1. As to vacancies, see ante page 116, sec. 136; page 119, sec. 155; page 120, sec. 163, sec. 168. As to oath of office, &c., see ante page 108, sec. 77, 78.

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have cognizance.

counsel, executor, administrator, guardian, heir devisee, legatee, or otherwise, such case, and all matters relating thereto, shall be instituted, transacted, prosecuted, heard, and determined in and before the circuit court of the same county; and such court shall have full and complete jurisdiction thereof, and shall be governed in all matters and things touching the same by the provisions of law which govern probate courts in similar cases.

When cause shall be transferred to circuit court.

SECT. 10. If during the pendency of any such suit or matter, the probate judge shall become disqualified to hear and determine the same, for any of the causes specified in the last preceding section, such suit or matter shall be transferred to the circuit court of such county, with like effect as if the same had been instituted in such circuit court according to the provisions of the preceding section.

Powers, how exercised by probate court.

SECT. 11. Such probate courts, in exercising the powers and jurisdiction granted to them by law, shall be governed by the same laws and restrictions that appertain to circuit courts, and in the same manner so far as the same may be applicable, and shall have power to grant and issue all writs, rules, citations, or other process, to bring any party or person into court, or to carry the orders, judgments, and decrees of such probate court into effect.

Process, how executed.

SECT. 12. All process issued out of the probate court, and all orders and decrees made or pronounced by such court, shall be executed, returned, and enforced, in the same manner, and under like penalties, as the process, orders, and decrees of the circuit court are by law to be executed, returned, or enforced, unless otherwise directed by law.

Chancery powers.

SECT. 13. Probate courts shall have all the powers of courts of chancery in coercing answers, making up issues, punishing contempts, and taking bills, petitions, answers in the nature of a cross bill, or other pleadings as confessed according to the laws of this state, and the usages and practice of such chancery courts.

Change of venue.

SECT. 14. They shall have power to grant changes of venue, upon the conditions and restrictions, and according to the usages and customs of other courts of record in this state, and shall exercise all the powers of courts of law and chancery to carry the provisions of this section into complete effect.

Issues of fact.

SECT. 15. Whenever in any suit or proceeding pending in a probate court in which the parties shall make an issue or issues of fact, or in which according to the usages and practice of courts of chancery, it may be proper that an issue or issues of fact, or a comprehensive note and entry thereof be made, such probate court shall be authorized to order such issue or entry when so made to be docketed for trial at the term of the court next after the docketing thereof, unless the parties can sooner be ready for the trial thereof.

Venire.

SECT. 16. Whenever any issue is pending proper to be tried by a jury, a venire for a jury shall issue by order of the court,

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or may be issued by the clerk at the request of either party, having the right to have the same tried by a jury.

Jury.

SECT. 17. The court in its discretion may order a jury to be selected by the clerk and sheriff by lot from the panel of petit jurors selected for the preceding term of the circuit court last holden in such county; but if no such order is made, the sheriff shall select such discreet and disinterested persons as he may deem proper, who are freeholders or householders of such county.

Jurors compelled to attend.

SECT. 18. Jurors duly summoned in such probate court shall be compelled to attend in like manner and under like penalties as in the circuit courts.

Jurors failing to appear, court to direct how to call others.

Challenge.

SECT. 19. If any or all of the jurors summoned to attend, fail to appear, or having appeared, are rejected or set aside, in whole or in part, for any cause, other jurors may be summoned forthwith, in such manner as the court shall direct; and in all cases the parties may challenge jurors peremptorily, or for cause, as in the circuit court.

Trial by jury, how governed.

SECT. 20. Trials by jury in the probate court shall be governed in all cases as similar trials in the circuit courts; and writs of inquiry may in like manner be awarded and executed; the verdicts of juries be set aside, and new trials granted, and a venire de novo awarded.

Judgment, &c. on verdict.

SECT. 21. Judgment and decree may be rendered upon the verdict of such jury, judgment arrested, and such other and proper order or proceeding had thereon, as in other courts of record.

Witnesses.

SECT. 22. Witnesses necessary for any party may be summoned, and their attendance enforced, in like manner, and under like penalties as in the circuit courts; and depositions may be taken for the same reasons, and in like manner, and admitted as evidence under the same rules as in such circuit courts.

Process, how tested and sealed.

SECT. 23. All process issuing out of the probate court shall be tested by the clerk, and, with the exception of subpœnas for witnesses, shall be sealed with the seal thereof.

What writs to issue of course.

SECT. 24. Writs of summons, of citation, of scire facias, of subpœna, and of execution, may issue as a matter of course, upon the filing of a declaration, a precipe, bill, or other requisite preliminary proceeding, as the case may be.

What writs must be ordered by the court.

Return of subpœnas.

SECT. 25. Writs of attachment and of distringas shall issue only when ordered by the court, and shall be returnable at such time as the court shall direct; and subpœnas for witnesses shall be returned at any time after service thereof, or when ordered to be returned by the party at whose instance the same may have been issued.

Citations, when returnable.

SECT. 26. Citations, unless otherwise required by law, shall be returned at such day of any term of the court as such court shall direct.

Process, when returnable.

SECT. 27. All other process, for the return of which no specific time is required by law, shall be returnable on the first day of the term next ensuing the time of issuing the same.

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Power of court as to issuing and enforcing return of process
Who shall execute process.

SECT. 28. The jurisdiction of each probate court, in regard to the issuing and enforcing the due return of process, shall be co-extensive with the limits of the state; and the sheriff or other proper officer of any county into whose hands any such process shall come, shall receive, execute, and return the same in like manner as he is required in cases of process issued out of any circuit court.

Process to be served twenty days before court.

SECT. 29. Unless otherwise specially provided for by law, if a summons, citation, or any original or mesne process whatever returnable to the first day of the term, is executed twenty days before the return day thereof, and the party required to appear shall fail so to do, he shall be liable to judgment or decree by reason of his default, or to an attachment for contempt, as the case may require, and where no rules or regulations of law require a different course, such court shall proceed therein in like manner as is prescribed or required in similar cases in the circuit court.

Power of the court to enforce its judgments, decrees, orders, rules, &c.

SECT. 30. The several probate courts shall have the same power and authority, under like restrictions and rules of law, to enforce and execute their orders, rules, judgments, and decrees that belong to circuit courts, by attachment and fine, fieri facias, venditioni exponas, or capias ad satisfaciendum; and all such writs shall be issued and executed, and returnable according to the laws of this state authorizing the issuing, execution, and return of such writs in the circuit courts.

Effect of judgments and decrees as liens, &c.

SECT. 31. All judgments and decrees of the probate courts, and executions issued thereon, shall have the same force and effect as liens upon the estate and property of the parties against whom the same may be rendered, as similar judgments and decrees in the circuit courts, and under the same rules and provisions of law.

Stay of execution.

SECT. 32. The provisions of law relating to the stay of execution on entering recognizance of replevin bail, shall be applicable to all judgments and decrees of the probate court for the payment of a specific sum of money or costs, with like force and effect as to the principal and the bail, and the issuing and execution of process thereon, and the rights and remedies of such bail.

Appeal or writ of error.

SECT. 33. Any person aggrieved by any order, sentence, judgment, decree, or denial of any probate court, may at his election, for the purpose of correcting any error therein, take the same to the supreme court of this state, or to the circuit court of the county within and for which such probate court was held, in like manner, and subject to the same laws, rules, and regulations by and under which judgments and decrees of the circuit court may be taken to the supreme court by appeal or writ of error.

Proceedings, &c. in the superior court.

SECT. 34. The supreme or circuit court to which such appeal may be taken, or in which such writ of error may be prosecuted, shall have the same jurisdiction thereof, and shall entertain, hear, and determine the same in all respects as in cases of appeal and

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writs of error in the supreme court to correct the errors of circuit courts. ARTICLE 1.

SECT. 35. Such writs of error and appeals shall be granted and conducted, and execution on the judgment or decree of the probate court shall be stayed or superseded on the same terms and conditions as in other cases in the supreme court. Appeal; writ of error; supersedeas.

SECT. 36. But when any such appeal or writ of error shall be taken to or brought in the circuit court, and the president judge of such court shall be disqualified from hearing and determining the same for any reason which would disqualify him from hearing and determining the same if he were the probate judge, as specified in the ninth section of this chapter, the clerk of such circuit court shall certify the transcript of such cause to the supreme court, and such supreme court shall determine the same as if such appeal had in the first instance been taken to, or such writ of error had been originally brought in such supreme court. Appeal, &c. to circuit court, when to be certified to supreme court.

SECT. 37. It shall be the positive duty of probate courts, ex officio, to compel by citation and attachment, all executors, administrators, and guardians, to appear at proper times, and file inventories of estates entrusted to their administration, and on the settlement of estates, to make and file an account current, exhibiting fully and completely all receipts and expenditures, and the exact amount in their hands, and the deductions proper to be made therefrom for their charges and expenses as such executors, administrators, and guardians, and to compel a final settlement of the estates and matters entrusted to them, without any unnecessary delay. Positive duty of probate court to cite executors, &c. to account, &c.

SECT. 38. It shall be the duty of said courts to examine the bonds of all guardians, at least once in every two years; and if upon such examination, any such courts shall have doubts of the solvency or sufficiency of the sureties in any such bond, the court shall cite such guardian to show cause why he shall not execute a new bond, with surety or sureties to the satisfaction of the court. Shall examine bonds.

SECT. 39. If upon the hearing of such matter, the court shall require a new bond with sufficient sureties, and such guardian shall fail to comply with the order of the court, he shall be removed from his said trust, and his letters revoked and rescinded, and another guardian appointed in his place. May remove guardian.

SECT. 40. The probate court of each county shall hold four terms in each year, to commence on the second Mondays of February, May, August, and November, and shall sit six days at each term, if the business shall require it. Terms of court, when held.

SECT. 41. If, however, the board of county commissioners, or the circuit court for the county, shall happen at the time herein prescribed for the sitting of the probate court, such probate court shall commence its term on the Monday next following such session of the board of county commissioners, or term of such circuit court. When held if circuit court, &c. meet at same time.

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PART III.

Clerk and sheriff.

SECT. 42. The clerk of the circuit court and sheriff of the county, or other officer acting as such, shall be the clerk and executive officer of the probate court.

Duty of clerk.

SECT. 43. It shall be the duty of the clerk to keep a fair record of all rules, orders, judgments, decrees, and other proceedings of the probate court, separate from the records of the circuit court, in books which he shall provide at the expense of the county.

Shall keep a docket.

SECT. 44. Such clerk shall keep a docket of all suits, motions, or other matters and proceedings pending in said court, and of all letters testamentary, and of administration, and the proceedings thereon, until the same same shall be finally settled; and shall provide as aforesaid and keep complete record books, in which he shall, as soon as the same can be reasonably done, make a complete record of such suits, motions, matters, and proceedings, as they are finally ended and determined.

Complete record.

Sheriff.

SECT. 45. It shall be the duty of such sheriff, or officer executing the duties of sheriff, to attend such court during the sessions thereof, and to serve and deliver all rules and orders, and execute all process emanating from any probate court in this state, and directed to him.

CHAPTER 40.

OF ACTIONS AT LAW, AND THE PROCEEDINGS THEREIN.

ARTICLE 1. Of the commencement of actions for the recovery of debt, or damages only; the service of process therein; of special bail; and of surety for costs in actions, suits, and proceedings.

ARTICLE 2. Of the surrender of the principal by his bail, and the action on the recognizance of special bail.

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ARTICLE I.

Of the commencement of actions for the recovery of debt, or damages only; the service of process therein: of special bail; and of surety for costs in actions, suits, and proceedings.

SECTION
1. Summons or capias, etc.
2. Process against a corporation.
3. Forms of writs.
4. Declaration or precipe to be filed before the writ shall issue.
5. Special bail.
6. Special bail not required without affidavit.
7. Effect of the undertaking of special bail.
8. By whom bail ordered.
9. Order of bail endorsed on writ.
10. No capias delivered without order of bail.
11. Provisions as to affidavits to hold to bail.
12. Foreign affidavit.
13. Capias, how executed.
14. Return.
15. Defendant when held in custody.
16. If plaintiff fail to declare, etc., defendant discharged.
17. Notice by plaintiff, if bail insufficient.
18. Hearing as to the insufficiency of bail.
19. Liability of sheriff.
20. When further time allowed to give notice of such insufficiency.

SECTION
21. Defendant held on capias, may controvert commitment on habeas corpus.
22. Discharge on such habeas corpus shall discharge the bail.
23. How summons shall be served.
24. Alias summons or capias.
25. Writs, how issued and when returnable.
26. Officer receiving writ shall endorse date of reception and execution.
27. Process to another county.
28. Same, when defendant removes, etc.
29. Capias to another county, how executed.
30. Sheriff, etc., to take duplicate receipts of keeper of jail in such cases.
31. Plaintiff may suggest "not found," as to part of the defendants, etc.
32. When officer shall not return "not found"
33. Non-resident plaintiffs to give bond for costs.
34. Who may sue on such bond.
35. Amount recoverable on such bond.
36. Witnesses, etc., may sue thereon.

SECTION 1. Actions brought for the recovery of any debt, or for damages only, may be commenced either by the issuing of a capias ad respondendum or by a summons. Summons or capias.

SECT. 2. The process against a corporation shall be a summons, which being executed on the president, presiding officer, or a majority of the members, the proceedings thereon shall be the same in all other respects as against natural persons. Process against a corporation.

SECT. 3. The forms of writs in civil actions shall be the same as have been heretofore established by law and by the usage and practice of the courts; but alterations therein may be made or allowed by the courts, when necessary to adapt them to changes in the law, or for other sufficient reasons; and all such changes and modifications of writs shall be subject to the final control and decision of the supreme court. Forms of writs.

SECT. 4. Any person demanding a writ shall file a declaration or precipe with the clerk of the court, who shall thereupon make out and deliver such writ as may be properly required. Declaration or precipe filed before writ shall issue.

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Special bail.

SECT. 5. Where process requiring bail is executed, no appearance bail shall be demanded, but the officer executing such process shall take a recognizance of special bail of some freeholder resident in this state, on the back of the writ, in substance as follows:

Form.

"I, A——— B———, do hereby acknowledge myself special bail for the within named ——— ———, in the suit specified in the within writ. Witness my hand this —— day of ———, A. D. ——.

A——— B———."

Which shall have the force and effect of a recognizance of special bail, and shall, in all respects, be obligatory as such.

Special bail not required without affidavit.

SECT. 6. Special bail shall not be required in any case until the plaintiff, his agent or attorney at law, shall make and file with the clerk or court where suit is instituted, an affidavit specifying the plaintiff's right to recover an existing debt or damages from the defendant, and also stating that he believes the defendant is about to leave the state of Indiana, taking with him property subject to execution, or money, or effects which should be applied to the payment of the plaintiff's debt or damages, as the case may be, with intent to defraud said plaintiff.*

Effect of undertaking of special bail.

SECT. 7. Any such recognizance of special bail shall only amount to an undertaking, that the defendant will surrender his body, or the money, property, and effects, or the value thereof, held and possessed by him at the time of making such affidavit; and in default of such surrender, the surety in such recognizance shall only be liable for the amount of such property, moneys, and effects, which the plaintiff may show the defendant to have held and possessed at the time of making such affidavit.†

By whom bail ordered.

SECT. 8. Bail, upon the filing of such affidavit, may be ordered to be required by the circuit court of such county, by any judge thereof, or by the clerk of such court.

Order of bail endorsed on writ.

SECT. 9. When such order for bail is obtained, the clerk shall endorse the order on the writ of capias ad respondendum, and also the amount of the debt or damages specified in such affidavit, and attest the same under his hand.

*In actions on tort there must be a positive affidavit of facts, sufficient to enable the court or judge to determine the quantum of the bail. In actions on contract, the affidavit, whether made by the plaintiff himself or by a third person, must show that there is, at the time of suing out the writ, an existing debt actually due, for which an arrest may be lawfully made. It must be positive as to the sum due, and not as the deponent believes, nor as appears by an account stated, nor as appears by an agreement dated at such a day. The case of executors, administrators, and assignees is an exception: they need only swear as to their belief. The sum specified in the affidavit or order of bail, is endorsed on the writ. *Lewis* v. *Brackenridge*, 1 Blackf. 112.
See *Cutshaw* v. *Birge*, 4 Blackf. 511.

†The bail cannot, in any action against them, plead any error in the judgment against the principal, nor can they have a writ of error for its reversal. On the return of the ca. sa. non est, the bail are fixed, but the proceedings against them by scire facias will be stayed on payment of costs upon the render of the principal. A discharge under a bankrupt or insolvent law is equivalent to a surrender. *Lewis* v. *Brackenridge*, 1 Blackf. 112.
When the bail are absolutely fixed, and have no further time, the right of the judgment creditor to his debt from the bail is a vested right, arising ex contractu, of which right no subsequent legislative act can deprive him. Ibid.

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ARTICLE 1.

SECT. 10. No writ of capias ad respondendum shall be delivered by any clerk to any officer to be executed, until the order for bail has been obtained and endorsed on such writ, as required in the preceding sections. No capias delivered without order of bail.

SECT. 11. Affidavits of the plaintiff's right to the debt or damages which he claims may be made by any person residing in this or any other state, territory, or country; and additional affidavits may be made by other persons, stating the further grounds necessary to obtain an order for bail; and upon filing such affidavits, an order for the bail may be entered, as in other cases. Affidavits to hold to bail.

SECT. 12. Any such affidavit coming from another state or territory, shall be authenticated in the manner prescribed by the laws of this state for the admission of records and judicial proceedings of other states as evidence. Foreign affidavit.

SECT. 13. The sheriff, or other officer to whom any writ of capias ad respondendum shall be delivered, shall execute the same, by arresting the body of the defendant, and holding him in custody until discharged according to law.* Capias, how executed.

SECT. 14. When any defendant arrested on any such process shall have given special bail as aforesaid, or for want thereof shall be committed to prison, the officer executing the writ shall specially endorse and return the same upon such process. Return.

SECT. 15. When any person who is arrested on civil process is committed to prison for want of bail, he shall be held in prison, unless he is bailed, or otherwise legally discharged, until final judgment in the suit in which he is arrested; and if such judgment be against him, he shall be held for such time thereafter as the court shall direct, not to exceed ten days, in order that the plaintiff may take his body in execution. Defendant when held in custody.

SECT. 16. When any such defendant is in prison by virtue of any such writ, and process has been executed more than ten days before the term to which such writ is returnable, if the plaintiff shall not declare against him, at least ten days previous to such term, such defendant shall be entitled to be discharged from his imprisonment, and have judgment of discontinuance against the plaintiff. If plaintiff fail to declare, &c. defendant discharged.

SECT. 17. If the plaintiff deem the bail insufficient, he may at the term to which the writ is returnable, or at the next term thereafter, if final judgment shall not have been given, object to the sufficiency of the bail, by giving three days' notice of the objection to the officer to whom the writ was directed. Notice by plaintiff, if bail is insufficient.

SECT. 18. At the time specified in such notice, the court shall proceed to hear and determine as to the sufficiency of such bail, and if adjudged insufficient, and other bail approved by the court is not given, such bail shall not be thereby discharged, but the plaintiff may proceed against such bail, as if they had not Hearing as to the sufficiency of bail. Liability of bail, &c.

*An endorsement of a recognizance of bail on a capias ad respondendum returned to the clerk's office, the defendant not being a party to the recognizance, is no evidence of the service of the writ. *Moore* v. *Bottorf, et al.*, 6 Blackf. 30.

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been determined insufficient; and if he cannot recover the amount for which such bail may have become liable, the officer taking such bail shall be liable on his official bond for the same, or so much as may remain unsatisfied, and for the costs of such suit against the bail.

Liability of sheriff.

SECT. 19. If the plaintiff shall neglect or fail to establish the insufficiency of the bail, as prescribed in the last three preceding sections, the sheriff shall not be liable to such plaintiff on account of the insufficiency of such bail, if it shall appear that he acted with due care and attention in accepting the same; otherwise he and his sureties shall be liable.

Further time to give notice of insufficiency of bail.

SECT. 20. If any notice respecting the insufficiency of the bail as above provided is insufficient, the court may grant further time during the same or the next term of the court, to make and give notice of objections to bail, if final judgment in the mean time shall not be given.

Defendant held on capias may controvert commitment on habeas corpus.

SECT. 21. When any person shall be committed to prison on mesne process, as before provided, for want of special bail, he may sue out a writ of habeas corpus in any court, or before any judge of competent jurisdiction; and on the return thereof, the plaintiff shall be compelled to show that the facts alleged in the affidavit on which the defendant is held to bail are true, and on failure so to do, the defendant shall be discharged.

Discharge on such habeas corpus shall discharge the bail.

SECT. 22. Such discharge shall exonerate the special bail from all further liability, and may be shown as a valid defence to any suit or proceeding which shall be instituted against such bail on their recognizance, or against the officer having such defendant in custody, for an escape on account of such discharge.

How summons shall be served.

SECT. 23. When any summons, as in this article provided, is issued, it shall be served either personally on the defendant, or by leaving a copy thereof at his usual or last place of residence.

Alias summons and capias.

SECT. 24. When any writ of summons or capias is returned "not executed," or "not found," the clerk, at any time after the return day thereof, without any order to that effect from the court, may issue another writ in the same case; and in like manner, from return day to return day, as often as the same is demanded, until a writ shall be returned fully executed.

Writs, how issued, and when returnable.

SECT. 25. All writs of summons, and of capias ad respondendum, may be issued by the clerk of the court in vacation or in term, and shall be made returnable on the first day of the term next after the time of issuing the same. *

Officer receiving writ shall endorse date of reception and execution.

SECT. 26. The officer to whom any such writ or process is directed, shall insert in his return, the time when such writ was received by him, and the time of its execution.

Process to another county.

SECT. 27. When one or more of the defendants reside in any other county of this state than the one in which suit is in-

* As to writs generally, see ante chapter 36, page 622. Constitution, ante page 54, sect. 11.
Clerk to endorse name of attorney on writ. See ante Chapter 36, sect. 14, page 624.

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stituted, process may issue to the sheriff or other proper officer of that county to be executed, and shall be returned to the court from which it was issued; but no judgment shall be given against such defendant, unless a writ in the same suit shall have been executed on some resident defendant of the county where the suit was commenced.

Same when defendant removes, &c.

SECT. 28. If a defendant reside in the county where any suit is instituted, and afterwards flee or remove therefrom, the plaintiff, on filing an affidavit of the fact, may have a writ issued to the sheriff or other proper officer of any other county; and if it is returned executed, he may proceed in his suit, as in other cases.

Capias to another county, how executed.

SECT. 29. When any sheriff or other officer shall receive any writ of capias ad respondendum, or summons issued out of the circuit court of another county, it shall be his duty to execute the same as therein commanded, and of his doings thereon make due return to the court whence it issued; and also, if the writ is a capias ad respondendum, to deliver the body of the defendant or defendants to the custody of the keeper of the jail of the county where the writ issued, unless recognizance of special bail shall be given.

Sheriff take receipts of keeper of jail in such cases.

SECT. 30. When such sheriff or other officer shall deliver such defendant or defendants as aforesaid, he shall take duplicate receipts thereof from the keeper of such jail, one of which he may retain, and the other he shall annex to and return with the writ.

Plaintiff may suggest "not found" as to part of the defendants.

SECT. 31. When any writ shall be returned "executed," as to one or more of the defendants, and "not found," as to others, the plaintiff may suggest such return upon the record, and proceed to final judgment and execution against the defendants upon whom the writ has been executed; and may, at any time thereafter, proceed against those "not found," by action against them jointly or severally.*

When officer shall not return "not found."

SECT. 32. It shall not be lawful for any officer to return "not found" as to any defendant, unless he have been once at least to his last place of residence, if he have any within the jurisdiction of such officer.

Non resident plaintiffs to give bond for costs.

SECT. 33. Plaintiffs, who are not residents of this state, before commencing any suit or proceeding whatever in any court of this state, shall file a bond in the office of the clerk of such court, payable to the defendant, with sufficient penalty and sureties, to be approved by such clerk, with condition for the payment of all costs, which may accrue in such suit or proceeding, either to the defendant or to the officers of the court; but such suit shall not be dismissed for want of a bond, if the plaintiff, or some person in his behalf, shall file such bond in

* If the writ be issued against two, and be executed on one only, the suit abates as to the other on whom the writ was not served, and no judgment can be rendered against him. *Glidewell et al.* v. *McGaughey*, 2 Blackf. 359.

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open court, within such time as the court shall deem reasonable; which bond, when executed, shall include all previous costs.*

Who may sue on such bond.

SECT. 34. Any such bond for costs may be put in suit by any of the persons entitled to costs.

Amount recoverable on such bond.

SECT. 35. If put in suit by the defendant, he shall be entitled to recover in such suit, all the the costs occasioned by such first suit; and the amount of the judgment, when collected, shall be paid into the clerk's office, to be distributed by the clerk to the persons entitled thereto.

Witnesses, &c. may sue thereon.

SECT. 36. If the defendant do not choose to put such bond in suit, suit may be instituted thereon in his name, for the use of the persons entitled to costs, or any one or more of them, and the amount thus recovered shall be paid to the persons entitled; if, however, in such case, a recovery is not had, the person or persons for whose use such suit was instituted, shall be liable for costs.†

ARTICLE II.

Of the surrender of the principal by his bail, and the action on the recognizance of special bail.

SECTION

37. Bail may surrender principal.
38. May take out bail piece.
39. Form of bail piece
40. How certified, if writ not returned.
41. How certified by the clerk.
42. Surrender in court.
43. Surrender to the jailer in vacation.
44. Bail shall deliver a copy of the writ to the jailer.
45. Exoneration of bail.
46. Jailer detain party in custody.
47. Surrender after judgment, notice to be given to plaintiff.

SECTION

48. Party, when discharged.
49. Notice to plaintiff of surrender.
50. Before judgment.
51. After judgment.
52. Notice in case of non-resident plaintiff, may be posted in the clerk's office.
53. Notice not given, bail not exonerated.
54. Action on recognizance of special bail.
55. Limitation of such action.
56. Pleadings of defendant.

Bail may surrender principal.

SECT. 37. Any person who has become bail for another, as provided in the preceding article, may, at any time before final

*Neither the examination of witnesses nor supplemental or counter affidavits are admissible. *Scott* v. *Mortsinger*, 3 Blackf. 189.

It was ordered by the circuit court that a non-resident plaintiff should give security for costs within twenty days, or that the suit should be dismissed. *Held*, that the court, (the security not having been given according to the order,) might permit the plaintiff, at the next term, to file the bond for costs. *Freeman* v. *Hukill*, 4 Blackf. 9.

When the plaintiff becomes a non-resident after the commencement of the suit, he may be required to give security for costs. *Malaby* v. *Hinkston*, 4 Blackf. 127.

The failing to give security for costs before the commencement of the suit, is not, of itself, a cause of continuance. *Cox* v. *Hunt et al.*, 1 Blackf. 146.

†A declaration on a bond for security for costs, stating that the plaintiff sues for himself *and others, officers of the court*, is bad. Any person interested may sue for himself, on the bond, and obtain a judgment for the penalty; and afterwards any other person interested may, upon that judgment, have a scire facias. It is not sufficient in an action on such bond, to state that the defendant has not paid the costs, without setting out the amount of costs incurred. *Glidewell et al.* v. *McGaughey*, 2 Blackf. 359.

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judgment against him on his recognizance of special bail, exonerate himself from all further responsibility, by surrendering his principal as provided in this article, upon the payment of all costs which shall have accrued against such bail.* ARTICLE 2.

SECT. 38. The bail shall have power, at any time, to take out a bail piece, by virtue of which he may take his principal and deliver him into the custody of the proper officer. May take out bail piece.

SECT. 39. Such bail piece shall consist of a copy of the writ on which the arrest was made, and of the recognizance of special bail, authenticated as provided in the next two sections. Form of bail piece.

SECT. 40. If the writ has not been returned, such copy of the writ and recognizance may be certified to be a true copy by the sheriff or other officer executing the writ; and in such case it shall also be certified thereon by the clerk of the circuit court of the county in which such sheriff holds his office, that such certificate is by such sheriff or other officer, and the clerk shall affix thereto the seal of said court. How certified if writ not returned.

SECT. 41. Whether such writ has been returned or not, a a copy thereof and of such recognizance, duly certified by the clerk of the court to which such writ is returnable, and sealed with the seal of said court, shall be a sufficient bail piece. How certified by the clerk.

SECT. 42. If the court to which the writ is returnable is in session at the time of the surrender, the same may be made in open court; and the court shall cause the discharge of the bail from all liability to be entered of record. Surrender in court.

SECT. 43. If such court is not in session, such surrender may be made to the keeper of the jail of the county in which the writ on which the principal was held to bail was returnable; and such keeper shall receive the prisoner and hold him in custody in like manner as if he had been committed by virtue of the writ on which he was held to bail. Surrender to the jailer in vacation.

SECT. 44. But the jailer shall not be bound to receive any person so surrendered, unless the bail shall deliver to him a copy of the writ on which the arrest took place, and of the recognizance of special bail, attested by the officer who executed the writ, and took such recognizance, or if the same have been returned, then by the clerk in whose custody they may be; and the delivery of such copies with the prisoner, shall be a sufficient warrant for the jailer, although the surrender and commitment should prove to be unlawful on the part of the bail. Bail shall deliver copy of the writ to the jailer.

SECT. 45. Such keeper of the jail shall acknowledge the reception of such principal on the bail piece, and such surrender shall acquit the bail from all liability as such special bail. Exoneration of bail.

SECT. 46. Every person committed to jail, upon being surrendered by his bail, shall be held in custody by the keeper thereof; and if such surrender is before judgment against such principal, he may be bailed as if he had been committed on pro- Jailer detain party in custody.

*See ante page 672, note to section 7 of this Chapter.

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cess, whether notice of the surrender shall have been given to the plaintiff or not; and he shall, in all respects, have the same rights and privileges, as if he had been committed on the writ on which such recognizance was taken.

Surrender after judgment, notice to be given to plaintiff.

SECT. 47. If such surrender be made after such judgment, by the bail delivering him into the custody of the keeper of the jail, such keeper shall detain the person so surrendered in his custody for the space of five days after notice of such surrender shall have been given to the plaintiff, in order to give such plaintiff time to charge such person in execution.

Party, when discharged.

SECT. 48. If such person is not charged in execution within the time prescribed, he shall be discharged out of custody, without the necessity of any writ or legal proceeding for that purpose.

Notice of surrender.

SECT. 49. The bail shall, within ten days after such surrender, cause notice of the time and place thereof to be given to the plaintiff or his attorney.

Before judgment.

SECT. 50. If the surrender of such principal is before judgment against him, notice thereof may be served on the plaintiff or his attorney by any person of full age.

After judgment.

SECT. 51. If such surrender is made after judgment, notice thereof shall be served by any sheriff, or his deputy, of the county where such plaintiff or his attorney resides; and in the last mentioned case a copy of such notice, attested by the officer serving the same, shall be delivered to the keeper of the jail having such principal in custody, on or before the expiration of ten days from the time of the surrender.

Notice in case of non-resident plaintiff may be posted in clerk's office.

SECT. 52. If, however, when such surrender is made after judgment against the principal, and the plaintiff at the time thereof shall not reside in this state, and shall have no attorney in this state, notice shall be posted up for ten days from the time of such surrender in the clerk's office of the county in which the surrender was made, and a copy of such notice, attested by the clerk, shall be forthwith thereafter delivered to the keeper of such jail.

Notice not given, bail not exonerated.

SECT. 53. If any bail shall not comply with the provisions of the two preceding sections, so far as the same require notice to plaintiffs of the surrender of the principal after judgment against him, and such principal shall be discharged out of custody by the keeper of the jail for not being charged in execution by the plaintiff, such bail shall continue liable on his recognizance, in like manner as if such surrender had never been made.

Action on recognizance of special bail.

SECT. 54. Whenever an action shall in any case have accrued against any special bail, the creditor may maintain an action of debt on the recognizance of special bail in his own name.

Limitation of such action.

SECT. 55. No such action shall be maintained against any person as bail, unless the writ therein be sued out within two years after the rendition of final judgment against the principal.

Pleadings of defendant.

SECT. 56. The defendant in any such action may plead that he never became bail as alleged against him, and shall thereupon

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be entitled to every ground of defence of which he could have availed himself upon a plea that such recognizance was not his deed; or he may plead specially any sufficient matter in his discharge. ARTICLE 3.

ARTICLE III.

Of the commencement and maintaining of suits by or against infants, and by and against poor persons.

SECTION
57. Infant may maintain actions.
58. Next friend appointed for infant who is sole plaintiff before process.
59. Next friend shall assent in writing.
60. On filing such assent process to issue.
61. Court may remove next friend.
62. Court may require surety of such next friend.
63. Guardian ad litem.
64. How appointed.
SECTION
65. When guardian responsible for costs.
66. When party may sue or defend as a poor person.
67. Affidavit.
68. Court may admit such person.
69. Person thus admitted not liable for costs.
70. Same.
71. Court may for improper conduct impose costs.

SECT. 57. When any infant shall have any right of action to recover real property, or any interest therein, or the possession thereof, or to recover any debt or damages, he shall be entitled to maintain a suit thereon; and the same shall not be delayed or deferred on account of such infant not being of full age. Infant may maintain actions.

SECT. 58. Before any process shall be issued in the name of an infant who is a sole plaintiff in any suit, a competent and responsible person shall undertake to appear therein as the next friend for such infant; and such next friend shall be responsible for the costs of such suit. Next friend for infant who is sole plaintiff before process.

SECT. 59. When any suit is to be brought in the name of such infant, the person proposed to be the next friend of the infant shall give his consent thereto in writing, which shall be filed in the clerk's office in which such suit is to be instituted. Next friend shall assent in writing.

SECT. 60. Upon the filing of such consent, process may issue, and such suit proceed without any order or leave of the court, or any judge thereof, for the appointment of a next friend.* On filing such assent, process to issue.

SECT. 61. But the court in which such suit is pending, if it shall appear that such next friend is incompetent or irresponsible, may remove him, and permit some suitable person to be substituted, without prejudice to the progress of the suit. Court may remove next friend.

SECT. 62. The court, in its discretion, may require any next friend of an infant in a suit to recover any debt or damages, to execute a bond to such infant, with sufficient sureties to be approved by the court, conditioned that such next friend shall duly Court may require surety.

* A declaration stating that the plaintiff sues by prochein amy, without showing the plaintiff's infancy, and the prochien amy's admission is bad on general demurrer. *Shirley* v. *Hagar*, 3 Blackf. 225.

An infant plaintiff is not liable for costs. *Bouche* v. *Ryan*, 3 Blackf. 472.

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account to such infant for all moneys which may be recovered in such suit.

Guardian ad litem.

SECT. 63. When any suit shall be prosecuted against any infant defendant, the plaintiff shall proceed no further in such suit after the service and return of process, and filing of the declaration, until a guardian shall be appointed for such infant in the defence of such suit.

How appointed.

SECT. 64. Such guardian shall be such discreet person willing to receive the appointment as such infant defendant shall name; or if such defendant on the first calling of the cause, fail to name to the court some suitable person, the court shall appoint a guardian for such infant for the purpose aforesaid.

When guardian responsible for costs.

SECT. 65. No person appointed as such guardian shall be liable for the costs of such suit, unless charged by the special order of the court for some personal misconduct in such cause.

When party may sue or defend as a poor person.

SECT. 66. Every poor person not having sufficient means to prosecute or defend any suit, may petition the court in which such suit is intended to be brought, or is depending, for leave to prosecute or defend, as the case may be, as a poor person.

Affidavit.

SECT. 67. Such person shall make and file in the proper court, an affidavit, if a plaintiff, setting forth the nature of his cause of action, and if by the defendant, the nature of his defence to such action; and it shall also be specified in every such affidavit, that the person making the same is not worth in property, after the payment of his just debts, the sum of twenty dollars, exclusive of the necessary wearing apparel of himself and family, and that he verily believes that injustice is about to be done to him for the want of the necessary means to prosecute or defend such suit, as the case may be.

Court may admit such person.

SECT. 68. The court to which such application shall be made, if satisfied of the facts alleged, shall admit him to prosecute or defend as a poor person, and shall assign him counsel and attorneys, and all other officers requisite for prosecuting or defending his suit, who shall do their duty therein without taking any fee or reward therefor.

Person thus admitted not liable for costs.

SECT. 69. Every person so admitted shall not be liable to pay any fees to any officers or ministers of justice, and shall not be prevented from being so admitted by reason of his being liable for any costs of any former suit brought by him against the same party.

Same.

SECT. 70. If the plaintiff who is thus admitted be non-suited, or a verdict or judgment be given against him, or if judgment be given against any such defendant, neither of such persons thus admitted shall be liable for any costs in any such suit.

Court may for improper conduct impose costs, &c.

SECT. 71. If the person so admitted be guilty of any improper conduct, or of any unjustifiable delay in the progress of such suit, the court may, in its discretion, annul the order admitting him to prosecute or defend as aforesaid; and he shall thereafter be deprived of all benefit of the order admitting him to prosecute or defend as such poor person.

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ARTICLE IV.

Of the abatement of suits by death, marriage, or otherwise, and of their revival; and also of the effect of certain pleas in abatement; and of amending writs and proceedings by striking out the names of parties.

SECTION
72. When cause of action shall survive to party to the suit.
73. When to executors or administrators.
74. When against executors or administrators.
75. Trustees or guardians.
76. Same.
77. Marriage of female plaintiff before judgment.
78. After judgment.
79. Alleged husband may controvert marriage.
80. Death, removal, &c. of officers, public trustees, &c. pending an action.
81. Party becoming insane pending an action.
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83. Party dying before appeal filed.
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88. When to issue.
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92. Plaintiff may take a writ for the party named in such plea.
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94. Proceedings if writ returned "not found."
95. Bail in such case.
96. Infancy pleaded, plaintiff, as to the infant, may discontinue.
97. Plaintiff may omit name of infant defendant.
98. Plaintiff may amend by striking out the name of a defendant.
99. Such defendant may be called as a witness.
100. Parties may amend, &c. when necessary by the provisions of this article.

When cause of action shall survive to party to the suit.

SECT. 72. If in any action there be two or more plaintiffs, and one or more of them die before judgment therein, the action shall not be thereby abated if the cause of action survive to the surviving plaintiff or plaintiffs; and where there are two or more defendants in any action, and one or more of them die before final judgment, such action shall not be thereby abated; but in either of said cases such death shall be suggested on the record, and the action shall proceed at the suit of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, as the case may require.*

*See 6 Blackf. 101.

When to executors or administrators.

SECT. 73. Where there is but one plaintiff in an action, or a surviving plaintiff to whom the cause of action shall have survived, and such action shall have abated by the death of any such plaintiff, such action, if the same might be originally brought by the executor or administrator, may be revived by the executor or administrator of such deceased party against the defendant therein, his executor or administrator, and prosecuted to final judgment, as if the same had been originally

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instituted by such executor or administrator against such defendant or his executor or administrator.

When against the executors or administrators.

SECT. 74. When any action shall have abated by the death of the defendant, or of a surviving defendant against whom the action shall have been continued, such action, if the same might be brought against the executors or administrators of any such defendant, may be revived against them, and prosecuted to final judgment, in like manner as if such action had been originally instituted against such executors or administrators.

Trustees or guardians

SECT. 75. Whenever a trustee or guardian who is a party to a suit shall die, and there is one or more surviving trustees or guardians, such suit shall not abate, but may be continued by or against the surviving trustees or guardians.

Same.

SECT. 76. When a suit shall abate by the death of a sole or surviving trustee or guardian who is a party to any suit, such suit may be revived by or against his successor or successors in such trust.

Marriage of female plaintiff before judgment.

SECT. 77. If a female plaintiff or defendant marry after suit brought and before final judgment, such suit shall not abate thereby, but upon such marriage, and the name of the husband being suggested on the record, such action may proceed for or against such husband and wife, and be determined in like manner as if such marriage had taken place before the commencement of such suit.*

After judgment.

SECT. 78. If a female plaintiff or defendant marry after final judgment against her, upon a rule for that purpose being served upon her husband, his name may be suggested on the record, and execution awarded by the court, in her name and the name of her husband.

Alleged husband may controvert marriage.

SECT. 79. If any alleged husband is sought to be made a party to any such suit or judgment, he shall have the same right to contest the fact of marriage, as if the suit had been originally brought against him as the husband of such female defendant.

Death, removal, &c. of officers, public trustees, &c. pending an action.

SECT. 80. When any action is brought by or in the name of any public officer, or by any trustee or trustees in the nature of a corporation, the death, removal, or resignation of any such officer or trustee, or of all such trustees, shall not abate the suit, but the same may be continued by the successor or successors, who shall be substituted for that purpose by the court, and a suggestion of such substitution shall be entered on the record, if necessary.

Party becoming insane pending the action.

SECT. 81. If, during the pendency of any action, either party shall become insane, the action may be prosecuted or defended by the guardian of such party, in like manner as if it had been commenced after the appointment of such guardian.

* The marriage of a feme sole defendant does not affect her liability. She cannot by taking a husband abate the suit, or prevent its progressing against her alone. *Sackett* v. *Wilson*, 2 Blackf. 85.

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ARTICLE 4.

This article applicable to appeals.

SECT. 82. The provisions of this article shall apply to all cases appealed to any court, in like manner as to cases originally instituted in such court.

Party dying before appeal filed.

SECT. 83. When an appeal from any judgment or final determination has been prayed to a superior court, and before such appeal has been filed in said court, the sole appellant or appellee, or one or more of several appellants or appellees, shall die, such appeal may nevertheless be filed, and the death of the party shall be suggested on the record; and such action shall proceed by or against the survivors, or the heirs, executors, or administrators may be substituted in like manner as if such suit had been originally instituted in such court.

Other cases.

SECT. 84. All cases of personal actions not provided for by this article, where there are plaintiffs or defendants to or against whom the cause of action shall survive, or when the suit shall abate by the death of the plaintiffs or defendants, shall be governed by the provisions of the fifteenth article of the thirtieth chapter of these Revised Statutes. *

Actions, when they survive to or against the heir.

SECT. 85. Whenever any suit shall abate by the death of the plaintiff or the defendant, and the right of action shall survive to or against his heir, such action may be revived by or against such heir; or if in any such action, both the plaintiff and defendant shall die, such action may be revived by the heir against the heir, and prosecuted to final judgment.

Pleadings in case of revivor of suits, &c.

SECT. 86. Whenever any suit shall be revived, as provided by law, the parties by or against whom the same is revived, respectively, may declare, amend, and plead therein, and prosecute and defend, in their own names, until the suit is determined, as if such suit had been originally instituted by or against them in their own names, or in their representative character, as the case may be.

Scire facias.

SECT. 87. Where any person who is entitled to prosecute or defend any suit, on the death of any party, or otherwise, does not voluntarily appear for that purpose, a scire facias, or citation, at the option of the other party, may be had against him, requiring such person to appear and take upon himself the prosecution or defence of such suit.

When to issue.

SECT. 88. Such scire facias or citation may be issued by the clerk in term or in vacation. If taken out in term, it may be made returnable at the same or the next term, as the court shall direct. If taken out in vacation, it shall be made returnable to the next term after the date of issuing the same.

Proceedings on return of scire facias.

SECT. 89. If the person thus cited or notified by scire facias shall not appear at the time specified, or within such further time as the court in its discretion may allow, the same proceedings may be had against him as if he were a party to the original action, and had failed to appear in such suit, and judgment shall be rendered against him in like manner as if

* See ante pp. 558, 559, sections 385 to 394, inclusive.

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he had been a party to such original suit; or if he be an executor or administrator, as if he were a party to such suit in said capacity.

Against executor or administrator before the year expires

SECT. 90. Any such citation or scire facias may be issued against any executor or administrator before the expiration of one year from the date of his letters; but the recovery of any judgment against him before the expiration of the said year, shall not authorize the opposite party to have any process or other proceedings for the collection of any judgment which he may recover, other than may be given to other creditors of the estate of the deceased.

Nonjoinder of a party pleaded in abatement, plaintiff may amend.

SECT. 91. When the defendant in any action founded on contract, covenant, or agreement, shall plead in abatement the nonjoinder of any other person or persons as defendant, the court may, at any time before issue joined on such plea, allow the plaintiff, on such terms as they shall prescribe, to amend his declaration by inserting therein the name of any other person or persons as defendant or defendants, jointly with the original defendant or defendants.

Plaintiff may take a writ for the party named in the plea.

SECT. 92. The plaintiff may thereupon take out a new writ of summons, to require such additional defendant or defendants to appear and answer as a defendant or defendants in the original action; or he may have a new writ of capias ad respondendum, in like manner as in the commencement of any such suit; and every such writ shall be returnable at such time as the court shall direct.

Such party bound to appear and answer plaintiff's action.

SECT. 93. Upon the return of such new writ, every person named therein as a defendant, upon whom the same shall have been executed, shall be bound to appear as therein required, and answer with the other defendants, in the same manner as if they had all been originally made parties to the first writ.

Proceedings if such writ returned "not found."

SECT. 94. If such new writ shall be returned "not found," as to all or any of the defendants named therein, such return may be suggested on the record, and the plaintiff may proceed to judgment and execution against the defendants who have been served with process, whether upon the first or new writ, in like manner as if all the defendants, named in both writs, had been included in the first writ.

Bail.

SECT. 95. The plaintiff shall have the same benefit of any bail taken on each of said writs, as if the same had been taken in the usual manner upon the first writ.

Infancy pleaded, plaintiff, as to infant, may discontinue.

SECT. 96. If any one or more of several defendants in any action upon any contract, covenant, or agreement, shall plead their infancy in abatement or bar, the plaintiff, before issue joined thereon, may discontinue as to such defendant or defendants, and proceed against the remaining defendant or defendants, in like manner as if the suit had been originally brought against him or them alone; and such discontinuance shall not delay or affect the right of the plaintiff to recover against such remaining defendant or defendants.

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SECT. 97. If, in case of any contract, agreement, or covenant, any person, otherwise proper and necessary to be made a defendant, shall be an infant, the plaintiff may omit to include the name of such infant as a defendant to such action; and if such omission shall be objected to by plea or otherwise, the plaintiff may reply or show such infancy; and if the same shall be determined for the plaintiff, he may proceed and recover against the person or persons made defendants in such action, as if the contract, promise, or agreement, upon which such action is founded, had been made with such defendant or defendants alone.

Plaintiff may omit name of infant defendant.

SECT. 98. In an action where there are two or more defendants, the plaintiff may amend his writ and pleadings by striking out the name or names of one or more of the defendants; but in every such case such defendant or defendants shall be entitled to costs up to the time of such amendment.

Plaintiff may amend by striking out defendant.

SECT. 99. Where any such amendment is not made until after the testimony in chief or otherwise has been closed on the part of the defence, the remaining defendant or defendants may, nevertheless, examine any defendant as a witness whose name has been thus stricken out, if he be otherwise competent.

Such defendant may be called as a witness.

SECT. 100. In all the cases mentioned in this article, where any change shall happen in a suit after its commencement, the court may allow all necessary suggestions and entries to be made on the record, and such amendments of the declaration and other pleadings as the case may require.

Parties may amend when necessary, &c.

ARTICLE V.

Of the limitation of personal actions.

SECTION

101. Actions limited to six years.
102. Bonds, notes, contracts in writing, judgments, &c. not within the provisions of last section.
103. Assault and battery and false imprisonment, three years.
104. Slander and libel, one year.
105. Penalty, &c. under a statute, two years.
106. Mutual and open accounts.
107. Other actions limited to twenty years.
108. Set-off.
109. Exception in favor of infants, married women, &c.
110. When defendant is out of the state when cause of action accrued.

SECTION

111. Death of party before time limited expires.
112. How limitation affected by failure of process, abatement, or arrest, or reversal of judgment, &c.
113. Party concealing, cause of action.
114. Case not taken out of the operation of this article, except by promise in writing, &c.
115. Joint contractors, &c. promise of one shall not affect the others.
116. Judgment against the contractor, &c. who is bound by the new promise.
117. To plea that others ought to have been joined, such new promise may be shown.

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SECTION
118. The last four sections qualified—effect of payment of any part of principal or interest.
119. Payment by a joint contractor, &c. shall not affect his co-contractor.
120. Actions by or on behalf of the state limited as other actions.
121. Judgment or decree presumed paid after twenty years.
122. When certain provisions of this article shall take effect.

Actions limited to six years.

SECT. 101. The following actions shall be commenced within six years next after the cause of action shall accrue, and not afterwards. *

Debt.

1. All actions of debt founded upon any contract or liability, except as provided in the next section.

On judgments of courts not of record.

2. All actions upon judgments rendered before a justice of the peace, or in any court not being a court of record.

Rent.

3. All actions for arrears of rent.

Assumpsit.

4. All actions of assumpsit, or upon the case founded on a contract or liability, express or implied, except as provided in the next section. †

Trespass, &c. to land.

5. All actions for waste, and for trespass upon land.

Replevin and trespass de bonis asportatis &c.

6. All actions of replevin, and all other actions for taking, detaining, or injuring goods or chattels.

Case except slander, &c.

7. All other actions on the case, except actions for slanderous words, and for libel.

Bonds, notes, contracts in writing, judgments, &c. not within the last section.

SECT. 102. None of the provisions of the foregoing section shall apply to any action brought upon any bond, promissory note, or contract in writing, ‡ nor to any action brought upon any bills, notes, or other evidences of debt issued by any bank, where the suit is against such bank, nor to any action brought on the judgment or decree of any court of record of this state, or of the United States, or of any state or territory of the United States.

Assault and battery, false imprisonment, three years.

SECT. 103. All actions for assault and battery and for false imprisonment, shall be commenced within three years next after the cause of action shall have accrued, and not afterwards.

Slander and libel, one year.

SECT. 104. All actions for slanderous words and for libel, shall be commenced within one year next after the cause of action shall have accrued, and not afterwards.

* The statute of limitations is constitutional: it has no reference to the validity of contracts, but only prescribes the time within which they may be enforced, and after that withholds the remedy. *Blackford, et al.*, v. *Peltier*, 1 Blackf. 36.

Technical and continuing trusts, not cognizable at law, are not barred by the statute of limitations. *Raymond, et al.*, v. *Simonson*, 4 Blackf. 77.

† When a request is essential to the maintenance of a suit for the non-performance of a trust or duty, the statute of limitations does not begin to run until the request has been made. *Raymond, et al.*, v. *Simonson*, 4 Blackf. 77.

The statute of limitations, in an action against an agent or factor, for not accounting, does not begin to run until a demand has been made. *Judah* v. *Dyott*, 3 Blackf. 324.

‡ At the foot of an account containing several items, there was the following acknowledgment: "I acknowledge the above account to be just. *Tho. Neighbors.*" *Held*, that this acknowledgment was a written contract, which under the act of assembly was not barred by the statute of limitations. *Neighbors* v. *Simmons*, 2 Blackf. 75. See also, *Hoyt* v. *Reed*, 3 Blackf. 368—*Raymond, et al.*, v. *Simonson*, 4 Blackf. 77.

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ARTICLE 5.

Penalty, &c. under a statute, two years.

SECT. 105. All actions founded upon any act of the general assembly, now or hereafter in force for the recovery of any penalty or forfeiture, whether the right of action is limited to the party aggrieved in whole or in part, shall be commenced within two years next after the cause of action shall have accrued, and not afterwards.

Mutual and open accounts.

SECT. 106. In all actions of debt or assumpsit, where there are mutual and open accounts current between the parties, the cause of action shall be deemed to have accrued at the time of the last item proved in such account. *

Other actions limited to 20 years.

SECT. 107. All personal actions on any contract, not limited by the provisions of the foregoing sections of this article, shall be brought within twenty years after the accruing of the cause of action, and not afterwards.

Set-off.

SECT. 108. Nothing contained in this article shall be construed to limit or prevent any party to any suit from pleading or replying any matter of set-off or payment, to the amount of any cause of action or defence which may be alleged.

Exceptions in favor of infants, married women, &c.

SECT. 109. If any person entitled to bring any of the actions mentioned in this article, shall at the time when the cause of action accrues, be within the age of twenty-one years, or a married woman, or insane, imprisoned, or absent from the United States, such person may bring said action within one year after such disability shall be removed.

Where defendant is out of the state when cause of action accrued.

SECT. 110. If at the time when any cause of action mentioned in this article shall accrue against any person, he shall be out of the state, the action may be commenced, within the time herein limited therefor, after such person shall come into the state; and if, after any cause of action shall have accrued, the person against whom it has accrued shall be absent from and reside out of the state, the time of his absence shall not be taken as any part of the time limited for the commencement of the action.

Death of party before the time limited.

SECT. 111. If any person entitled to bring or liable to any of the actions mentioned in this article, shall die before the expiration of the time herein limited for the commencement of such action, and the cause of action by law survives to or against his representatives, such action may be commenced by or against the executor or administrator of such deceased person, after the expiration of the time herein limited, at any time within eighteen months after such death, but not after that period.

How limitation affected by failure of process, abatement, or arrest or reversal of judgment, &c.

SECT. 112. If in any action duly commenced within the time in this article limited and allowed therefor, the writ shall fail for a sufficient service or return, by any unavoidable accident, or by any default or neglect of the officer to whom it may be committed, or if the writ shall be abated, or the action otherwise

* Where all the items of an account are on one side, the circumstance of some of them being within five years does not take the others of longer standing out of the statute of limitations. Aliter, where there are mutual accounts between the parties. *Buntin* v. *Lagow, et. al.*, 1 Blackf. 373. See also, *Knipe* v. *Knipe*, 2 Blackf. 340.

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avoided or defeated by the death of any party thereto, or for any matter of form, or if the suit shall be discontinued for want of a court at any regular term, or if judgment after verdict shall be arrested, or if judgment for the plaintiff shall be reversed on error or appeal, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein; and if the cause of action does in any such case by law survive, the executor or administrator of the plaintiff may, in case of his death, commence said new action within one year after his death.

Party concealing, cause of action.

SECT. 113. If any person liable to any of the actions mentioned in this article, shall conceal the cause of such action against him from the knowledge of the person entitled thereto, the action may be commenced at any time within the period limited therefor, commencing from the time the person entitled to bring the same shall discover that he has such cause of action against the person so liable and concealing the same, and not afterwards. *

Case not taken out of the operation of this article, except by promise in writing.

SECT. 114. In actions of debt, or upon the case founded on any contract, no acknowledgment or promise shall be evidence of a new or continuing contract, whereby to take any case out of the operation of the provisions of this article, or to deprive any party of the benefit thereof, unless such acknowledgment or promise be made by or contained in some writing signed by the party chargeable thereby.

Joint contractors, &c., promise of one shall not affect the others.

SECT. 115. If there are two or more joint contractors or joint executors or administrators of any contractor, no such joint contractor, executor, or administrator, shall lose the benefit of the provisions of this article, so as to be chargeable by reason only of any acknowledgment or promise made or signed by any other or others of them.

Judgment against the contractor, &c. who is bound by the new promise.

SECT. 116. In actions commenced against two or more joint contractors, or joint executors or administrators of any contractor, if it shall appear on the trial, or otherwise, that the plaintiff is barred by the provisions of this article, as to one or more of the defendants, but is entitled to recover against any other or others of them, by virtue of a new acknowledgment, or promise, or otherwise, judgment shall be given for the plaintiff, as to any of the defendants against whom he is entitled to recover, and for the other defendant or defendants against the plaintiff.

To plea that others ought to have been joined, such new promise may be shown.

SECT. 117. If, in any action on contract, the defendant shall plead in abatement that any other person ought to have been jointly sued, and issue be joined on that plea, and it shall appear on the trial thereof, that the action was by the provisions of this article barred against the person named in such plea, the said issue shall be found for the plaintiff.

* In cases of fraud the statute does not begin to run until the fraud is discovered. *Raymond, et al.*, v. *Simonson*, 4 Blackf. 77.

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ARTICLE 6.

The last four sections qualified.

SECT. 118. Nothing contained in the four preceding sections shall alter, take away, or lessen the effect of a payment of any principal or interest made by any person; but no endorsement or memorandum of any such payment, written or made upon any promissory note, bill of exchange, or other instrument of writing by or on behalf of the party to whom such payment shall be made, or purport to be made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of the provisions of this article.

Effect of payment of any part of the principal or interest.

Payment by a joint contractor &c. shall not affect his co-contractor.

SECT. 119. If there are two or more joint contractors, or joint executors or administrators of any contractor, no one of them shall lose the benefit of the provisions of this article, so as to be chargeable by reason only of any payment made by any other or others of them.

Actions by or on behalf of the state limited as other actions.

SECT. 120. The limitations hereinbefore prescribed for the commencement of actions shall apply to the same actions when brought in the name or on behalf of the state, or in the name of any officer, or otherwise, for the benefit of the state, in the same manner as to actions brought by citizens.

Judgment or decree presumed paid after 20 years.

SECT. 121. Every judgment and decree in any court of record of the United States, or of this or any other state, shall be presumed to be paid and satisfied at the expiration of twenty years after the judgment or decree was rendered.

When certain provisions of this article shall take effect.

SECT. 122. None of the provisions of this article respecting the acknowledgment of a debt, or a new promise to pay it, shall apply to any such acknowledgment or promise made before the first day of January in the year of our Lord one thousand eight hundred and forty-four; but every such last acknowledgment or promise, although not made in writing, shall have the same effect as if no provision relating thereto had been herein contained.

ARTICLE VI.

General provisions concerning actions.

SECTION

123. Actions which shall survive, &c.
124. By and against whom such actions may be commenced.
125. Cases in which exemplary damages, &c. shall not be given.
126. Executor, &c. of person claiming a special property, recovering goods or damages, the same shall not be assets, &c.
127. Judgment in replevin against executor, &c., shall, as to the goods recovered, exonerate him, &c.

SECTION

128. Charge of incest, fornication, adultery, whoredom, &c., actionable, without alleging or showing special damages.
129. Debt on a foreign decree.
130. Distinction between declarations in trespass and case shall no longer apply.
131. Bonds of officers, trustees, &c. shall be payable to the state, and be for the use of any party injured.

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SECTION
132. Suits thereon shall be in the name of the obligee, &c.
133. How stated in the pleadings, &c.
134. When and how other suits may be brought on the same bond.
135. Suit and judgment deemed personal suit and judgment of the relator. Costs.
136. Certified copy of such bond, evidence, &c.
137. When one action may be brought on the same bond by several relators, &c.
138. Bond not void for want of form.
139. Proceedings on defective bond.
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141. Such bond effective from its execution
142. In actions on bonds, plaintiff shall only recover amount he is equitably entitled to.
143. When plaintiff shall assign breaches.
144. Assessment of damages by jury on such assignment.
145. Judgment on demurrer, &c., jury shall assess damages; or if breaches are not assigned, they may be assigned and damages assessed.
SECTION
146. Verdict shall be entered; judgment for penalty and costs; judgment for damages, and execution for damages and costs.
147. Form of such execution.
148. Judgment in action on penal bond for payment of money.
149. Effect of satisfaction of judgment in suit on bond.
150. Proceedings in case of further breaches may be by scire facias.
151. Damages and execution therefor.
152. Effect of satisfaction of such second judgment. Further proceedings, &c.
153. Suits by officers against officers, on their official bonds.
154. Plaintiff in any action may dismiss the same in vacation.
155. Plaintiff in such case not liable to costs after notice to the adverse party.
156. Second suit on same cause of action not to abate in such case.
157. Suit by holder of a note against all the parties thereto.

Actions which shall survive, &c.

SECT. 123. In addition to the actions that survive by the principles of the common law, the following shall also survive, to-wit: actions of replevin and trover, and actions of trespass, and trespass on the case, for damage done to real or personal estate.

By and against whom such actions commenced.

SECT. 124. All the said last mentioned actions may be originally commenced by and against executors and administrators; and if commenced by or against the original party in his lifetime, they may be prosecuted or defended by or against his executor or administrator.

Cases in which exemplary damages, &c. shall not be given.

SECT. 125. When an action of trespass is commenced or prosecuted against any executor or administrator of the trespasser, the plaintiff shall be entitled to recover only for the value of the goods taken, or for the damage actually sustained, without any vindictive or exemplary damages, or damages for any alleged outrage to the feelings of the injured party.

Executor, &c., of person claiming a special property, recovering goods or damages, the same shall not be assets, &c.

SECT. 126. When the executor or administrator of a trustee carrier, depositary, or other person who claimed a special property in any goods, to hold them for the use and benefit of another, shall recover such goods, or damages for the taking or detention thereof, in an action of replevin, or trover, or trespass, the goods or money so recovered, shall not be considered as assets in the hands of such executor or administrator, but shall, after deducting the costs and expenses of the suit, be paid

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over and delivered to the person for whose use and benefit they were so held and claimed by the deceased person.

Judgment in replevin against executor, &c., shall, as to the goods recovered, exonerate him, &c.

SECT. 127. When judgment for a return in an action of replevin, shall be rendered against an executor or administrator, the goods returned by him shall not be considered as any part of the assets which may have come to his hands; and if they shall have been included in the inventory, it shall be a sufficient discharge for such executor or administrator to show that they have been returned in pursuance of such judgment.

Charge of incest, fornication, adultery, whoredom, &c. actionable without alleging or showing special damages.

SECT. 128. Every charge of incest, fornication, adultery, or whoredom, falsely made by any person against any female; also any words falsely spoken of and concerning any person, charging such person with incest, sodomy, buggery, bestiality, or the infamous crime against nature, either with mankind or any of the brute creation, shall be in themselves actionable without alleging or proving any special damages, in like manner and governed by the same rules and principles of law as in the case of slanderous words, charging a crime, the commission of which would subject the offender to death or to degrading pains and penalties.*

Debt on a foreign decree.

SECT. 129. Money due by a final decree of a court of chancery, or of a court having chancery jurisdiction, without this state may be recovered in an action of debt in like manner as if it were a judgment.

Distinction between trespass and case abolished.

SECT. 130. In all actions of trespass and trespass on the case, the declaration shall be deemed equally good and valid to all intents and purposes, whether the same shall be in form a declaration in trespass or trespass on the case.

Bonds of officers, &c., shall be payable to the state for the use of any party injured.

SECT. 131. All bonds or obligations directed or required to be given by any guardian, trustee, receiver, executor, or administrator; and all official bonds required and directed by law to be given by officers for the faithful discharge of the duties of their offices or trust, shall be made payable to the state of Indiana, and are hereby declared to be to, and for the use of, and in trust for, the person or persons interested, or who may be

* In slander for words actionable by statute, not at common law, the declaration did not aver the cause of action to be contra formam statuti. *Held*, that after verdict this is no objection. *Wilcox* v. *Webb et ux.*, 1 Blackf. 258.

Slander by a feme sole against husband and wife, for the following words spoken by the wife: "Doctor *Eddy* made an appointment with *Elizabeth Cunningham*, (meaning the plaintiff,) scaled the walls, and went to bed to her, (meaning the plaintiff,) at Mrs. *Reperton's* house; (thereby meaning that the plaintiff had committed fornication.)" *Held*, that the words were actionable under the statute. *Shields et ux.* v. *Cunningham* 1 Blackf. 86.

Action of slander brought by *A* and *Mary A*, his wife, for the following words charged to have been spoken of the wife, and of and concerning her character for chastity: "Have you heard that *B* was hunting up a story in circulation about *C* and *Mary A*, (meaning, etc.,) being seen in the woods together? I saw them in the woods together myself, etc. If you had seen what I have you would feel satisfied in your mind. God knows and I know that they are intimate; (thereby meaning that said *Mary* had been guilty of adultery with *C.*)" *Held*, that the words were not actionable unless they were spoken in a conversation about the wife's character for chastity. *Ricket* v. *Stanly*, 6 Blackf. 169.

Words spoken in another state, if actionable at common law will support an action here. Aliter, if not objectionable at common law, nor shown to be so by statute in the state where spoken, though actionable here by statute. *Stout* v *Wood*, 1 Blackf. 71.

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injured or aggrieved by any default, malconduct, or other violations of any such trust or duty by which any condition of such bond is broken. *

Suits thereon shall be in the name of the state, &c.

SECT. 132. Suits thereon shall be in the name of the obligee for the use of the persons interested, injured, or aggrieved; and the benefit of every such bond and obligation shall be extended to all such persons, so that no such bond shall be void on the first recovery, but may be put in suit from time to time, at the the instance and for the benefit of the party interested, injured, or aggrieved, whenever and as often as necessary, until the whole penalty of the bond shall be exhausted.

How stated in pleadings, &c.

SECT. 133. When suit is brought on any such bond it shall be stated in the process, pleadings, proceedings, and record in such action, that the same is brought on the relation of the person for whose use and benefit such suit is instituted.

Other suits may be brought on the same bond.

SECT. 134. During the pendency of any suit upon any such bond, or after judgment rendered in such suit, any other party aggrieved by any default, delinquency, negligence, or misconduct of such officer, may, in like manner, have a suit instituted thereon; and the pendency of any other suit on the relation of any other person on the same bond, or a previous judgment recovered thereon, by or against any other relator, shall not abate or in any manner affect such suit or the proceedings therein, until the whole penalty of such bond is exhausted. †

Suit and judgment deemed personal suit of the relator.

SECT. 135. Every suit brought on every such bond, and every judgment rendered thereon, shall be deemed to all intents and purposes the personal suit of the party on whose relation the same shall be brought or obtained; and the suit may be discontinued, and the relator may be nonsuited as in private suits, and the judgment therein may be discharged by such relator in the same manner as if he were the nominal plaintiff; and such judgment shall be deemed satisfied in the same cases as judgments in favor of individuals; and judgment for costs may be awarded against such relator in the same manner.

Costs.

Certified copy of such bond, evidence, &c.,

SECT. 136. Whenever any suit is brought on any bond of any trustee, guardian, executor, administrator, receiver, or any

*See farther as to bonds of officers, ante page 110, sections 93 to 100, inclusive.

As to the remedies on official bonds where additional bond or surety has been given, see ante page 113, sections 112, 113, 114, 115, 116; and also ante page 115, sections 127, 128, 129, 130, 131, 132.

†Debt by the state, on the relation, etc., on a justice's bond against the principal and his sureties. *Plea*, a former recovery by the state on the relation of divers persons, etc., for more than the penalty. *Replication*, that the present suit was first instituted, etc. *Held*, that the plea was good and the replication bad. *The State* ex rel. *Walker* v. *Ford et al.*, 5 Blackf. 392.

As to actions on sheriffs' bonds, see *Dawson* v. *Shaver*, 1 Blackf. 204.—*The State* v. *Hicks et al.*, 2 Blackf. 336.—*The Governor* for the use of *Gill* v. *Stribling et al.*, 2 Blackf. 24.—*Shelby* v. *The Governor*, 2 Blackf. 289.—*The State* v. *McClane et al.*, 2 Blackf. 192.—*The State* v. *Leavell et al.*, 3 Blackf. 117.—*The State* v. *Brem et al.*, 3 Blackf. 222.—*Rany et al.* v *The Governor*, 4 Blackf. 2.—*The State* v. *Spencer et al.*, 4 Blackf. 310.

As to actions against collectors of taxes, see *Lemon et al.* v. *Hay*, 1 Blackf. 227.—*Gibson County B. C.* v. *Harrington*, 1 Blackf. 260.—*Wilson et al.* v. *Lilly*, 1 Blackf. 358.—*The State* v. *Evans et al.*, 3 Blackf. 379.—*The State* v. *Johnson et al.*, 6 Blackf. 217.—*The State* v. *Leonard et al.*, 6 Blackf. 173.—*Vance et al.*, v. *The State*, 6 Blackf. 80.

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state, county, or township officer, the relator in such suit may procure a certified copy of the bond from the officer in whose custody the same is by law; and such copy, duly certified by such officer and sealed with the seal of his court, or of his office, if he have such seal, and if not, by his private seal, or ink scrawl, and certified and attested as required in the three hundred and sixth section of this chapter, may be declared on, produced on oyer, and adduced in evidence in such suit, in like manner and with like effect, and subject to be controverted or rebutted in like manner as the original thereof.

When one action may be brought on the same bond by several relators &c.

SECT. 137. Where different persons are entitled to have an action instituted on any such bond, if the alleged breach or breaches are the same, and the sum due or damages are recoverable in the same identical right, one action may be brought on the relation of all the persons thus entitled; and recovery may be had for the several debt or damages of each; and one execution may issue for the whole, specifying therein the sums to which each relator is entitled; and when collected, each person shall be paid the amount adjudged to him.

Bond not void, for want of form.

SECT. 138. When any bond, recognizance,* or surety is required by law to be given by any public officer, executor, administrator, guardian, or trustee, or by any person, payable to the state of Indiana, for the performance of any contract or duty, or for the benefit or use of the state or any individual, such bond or recognizance shall not be void, nor shall any such principal or his surety be discharged from any just liability for any want of form, or of the substantial matter, condition, or conditions required by law, nor by reason of any defect in the the filing or approval of such bond. †

Proceedings on defective bond.

SECT. 139. When any such bond or recognizance has not the formal or substantial matter, condition, or conditions, required by law, the principal obligor and his sureties shall be equitably bound to the person entitled to any debt or damages by reason of any neglect, misfeasance, malfeasance, nonfeasance, or violation of any trust or duty by such principal; and such person may have an action instituted on such defective instrument, at law or in chancery, as the case may require; and in such action he may suggest such defect or imperfection, and obtain a judgment or decree thereon, and have execution against such principal and his sureties, or the persons who were intended and included as sureties.‡

* In all cases in which the state takes an obligation from an individual for the performance of any duty, it should be by recognizance, unless the law otherwise direct. *Dickerson* v. *Gray*, 2 Blackf. 230.

† See ante page 110, section 98.

‡ The cause of action filed before a justice of the peace in debt against a constable and his surety, was a copy of an instrument in writing, purporting to be executed by the defendants, in the form of a constable's bond, (except that it was not sealed,) with an assignment of breaches of the condition appended to it. *Held*, that the cause of action under the statute was sufficient. *The State ex rel. Vigus* v. *Mowbray*, 6 Blackf. 89.

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Former judgment or decree establishing defective bond, conclusive.

SECT. 140. When any bond, recognizance, or instrument has been thus established by any judgment or decree, and any person is injured or aggrieved by the violation or neglect of any trust or duty on the part of any such principal, such person may have a scire facias thereon, and execution awarded, as in other cases; and such judgment or decree shall be held and construed as fully and conclusively establishing the validity of such bond, recognizance, or instrument intended as a bond or recognizance, so that its validity and force to bind such principal and his sureties, so far as the same has been established by such judgment or decree, shall not be controverted in any subsequent action of debt or scire facias instituted on such bond, judgment, or decree.

Such bond effective from its execution.

SECT. 141. Every such bond or instrument shall be deemed and taken as valid, and of full force and effect, from the time of executing the same.

In actions on bonds, plaintiff only recover amount equitably entitled to.

SECT. 142. In any action brought to recover the penalty of any bond, or the penal sum contained in any agreement, covenant, mortgage, or other written contract, the plaintiff shall recover only the amount to which in equity and good conscience he is justly entitled for the breach of any condition, or the non-performance of any covenant or agreement contained therein.*

When plaintiff shall assign breaches.

SECT. 143. When an action shall be prosecuted in any court of law upon any bond for the breach of any condition other than for the payment of money, or shall be prosecuted for any penal sum for the non-performance of any covenant or written contract or agreement, the plaintiff in his declaration shall assign the specific breaches for which the action is brought.†

Assessment of damages by jury on such assignment.

SECT. 144. Upon the trial of such action, the jury shall assess damages for as many of such breaches as the plaintiff may prove, and shall specify the amount thereof in their verdict, in addition to their finding upon any other question of fact submitted to them.

Judgment on demurrer, &c., jury shall assess damages.
Or if breaches not assigned, they may be

SECT. 145. If in such action the plaintiff shall obtain judgment upon demurrer, or by confession, default, or nihil dicit, a writ of inquiry shall be awarded by the court, to inquire into the truth of the breaches assigned, and to assess the damages of the plaintiff sustained thereby; or if breaches have not been assigned, the plaintiff may assign as many breaches as he may

*To be relieved from the penalty by the payment of what was justly due, the party prior to the 8 and 9 Will. 3, had to resort to a court of chancery. The statute remedies this inconvenience. See *Clark* v. *Goodwin*, 1 Blackf. 74, note 3.

In an action of covenant, on an express contract contained in the condition of a penal bond, the declaration need not aver the non-payment of the penalty. *Hughes* v. *Houlton*, 5 Blackf. 180. See *The State* v. *McClane, et al.*, 2 Blackf. 192.

†The English statute, and the statutes formerly in force in this state were, that the plaintiff *may* assign, &c.; but the decisions have been uniform that he *must* assign, &c. See *Clark* v. *Goodwin*, 1 Blackf. 74, note 3.

If some of the breaches assigned in a declaration in debt on a bond conditioned for the performance of covenants be good, and the others not, a demurrer to the whole declaration must be overruled. *Rock* v. *Gordon, et al.*, 6 Blackf. 192.

As to the proceedings, &c. see Appendix to 1 Blackf. 436 to 441, inclusive. *Clark* v. *Goodwin*, 1 Blackf. 74. *Perkins, et al.*, v. *Smith*, 2 Blackf. 171. *Morris, et al.*, v. *Price*, 2 Blackf. 457. *Glidewell, et al.*, v. *McGaughey*, 2 Blackf. 359. *Mitchell, et al.*, v *Porter*, 3 Blackf. 499. *Rany, et al*, v. *The Governor*, 4 Blackf. 2.

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think proper, and a jury shall inquire into the truth of such breaches and assess the damages which such plaintiff has thereby sustained.*

assigned, and damages assessed.

SECT. 146. In every such case, if the plaintiff recover, the verdict of the jury assessing his damages shall be entered on the record, and judgment shall be rendered for the penalty of the bond, or for the penal sum forfeited, as in other actions of debt, together with the costs of suit, and with a further judgment that the plaintiff have execution to collect the damages so assessed by the jury, and his costs; the amount of which damages shall be specified in such judgment.†

Verdict shall be entered. Judgment for penalty and costs; judgment for damages; execution.

SECT. 147. The execution upon such judgment shall be in the usual form in actions of debt, but shall contain or have endorsed thereon by the clerk issuing the same, a direction to the sheriff or other officer to collect the amount of the damages so assessed, with interest thereon from the time of such assessment.

Form of such execution.

SECT. 148. In actions on penal bonds for the payment of money, if the plaintiff shall recover, the judgment shall be given for the penalty of the bond, to be discharged by the payment of the principal and interest and costs of suit, and execution shall issue therefor.‡

Judgment on penal bond for payment of money.

SECT. 149. If the amount so authorized to be levied, according to the preceding sections of this article in the case of actions on bonds, shall be collected or fully paid and satisfied, the real and personal estate, and the bodies of the defendants, shall be discharged from all further liabilities and liens by virtue of such judgment; except that such judgment shall remain in force and as security for any damages that may be thereafter sustained by the further breach by the defendants of any condition of such bond, or by the non-performance of any covenant or written agreement, upon which such action was originally brought, and the performance of which was secured by such penal sum.§

Effect of satisfaction of judgment on bond.

SECT. 150. Whenever such further breaches shall occur, the plaintiff, or his personal representatives, or any person entitled to an action on such bond, for his use, may have a scire facias upon such judgment, suggesting further breaches against the defendant and all parties bound thereby, or their executors or administrators, and commanding that they be summoned, to show cause why execution shall not be issued upon such judgment for the amount of the damages sustained for such further breaches.

Proceedings in case of further breaches may be by scire facias

* When the plaintiff has judgment on demurrer, in debt on bond for the performance of covenants, the court may assess the damages, by consent of parties, without a jury. *Thompson, et al.*, v. *Wilson*, 1 Blackf. 358.

The omission to assess nominal damages when substantial justice has been done, is no cause for a new trial. *The State, for the use of Tillotson*, v. *Miller, et al.*, 5 Blackf. 381.

† The misprision of the clerk in not entering, as he should have done, a judgment for the penalty of a bond, may be amended at any time on notice and motion. *Smith* v. *Myers*, 5 Blackf. 223.

‡ See post sections 202 and 203, of this Chapter.

§ See ante sections 132, 133, and 134, of this Chapter, page 692.

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Damages, and execution therefor.

SECT. 151. The like proceedings to ascertain such damages shall be had upon such scire facias as are herein provided in the first instance, and if the plaintiff recover, judgment shall be rendered that he have execution to collect the amount of the damages assessed by the jury or otherwise, as also his costs.*

Effect of the satisfaction of such second judgment.

SECT. 152. Upon the satisfaction of any damages and interest thereon, and costs, upon such proceeding by scire facias, the real and personal estate, and bodies of the defendants, shall be discharged from all liabilities and liens, as in the first instance; such original judgment remaining in force, and as a security for further breaches, as herein before provided; and the like proceedings by scire facias may be repeated for still further breaches, as often as they may occur, until the whole penalty is exhausted.

Further proceedings, &c.

Suits by officers against officers on their official bonds.

SECT. 153. Any action brought against any officer on his official bond, at the instance of any other officer, as required by the provisions of any law of this state, shall be stated to be on the relation of such officer, and shall be conducted and prosecuted in the same manner as in cases of actions on official bonds by private relators, and shall be subject to all the provisions of law concerning the same, not repugnant to the provisions authorizing such action, nor to the nature and object of such action; but such relator shall not be liable for any costs, unless he is rendered liable therefor by the provisions of the law authorizing or directing such suit.

Plaintiff may dismiss action in vacation.

SECT. 154. The plaintiff in any action at law pending in any court, may file in vacation, or at any time before trial, a dismissal of such action in writing with the clerk of such court, who shall thereupon enter the same of record on the order book of said court, which shall operate as a discontinuance of such action; and at the next term of the court judgment shall be entered accordingly.

Plaintiff in such case not liable to costs after notice to adverse party.

SECT. 155. If the plaintiff shall give written notice of such discontinuance to the defendant or defendants in such suit, or their agent or attorney, such plaintiff shall not be liable for any costs therein after service of such notice, except such as may be occasioned by himself.

Second suit not to abate.

SECT. 156. If after such discontinuance is so entered of record, and before the judgment is entered in court thereon, an action shall be brought, in whole or in part, for the same cause of action, such action shall not be abated nor delayed by reason of the institution or pendency of such discontinued action; and the defendant in such subsequent action may be held to bail, or detained in custody for want thereof, and such suit may progress in all respects to final judgment and execution, as if such discontinued action had never been brought.†

* If the whole cause of action be shown in the scire facias, no declaration need be filed. *Lasselle* v. *Godfroy*, 1 Blackf. 297.

† A capias ad respondendum was issued against the defendant and one *Cook*, and was delivered to the sheriff the day it was issued. On the next day, the writ, not having been served, was, at the plaintiff's request, and with the consent of the sheriff, altered by the clerk, by striking out the name of *Cook*, and was afterwards served on the defendant, against whom alone the declaration was filed. *Held*, that the writ so altered was valid. *Held*, also, that the defendant could not, on these facts, support a plea of the pendency of a prior suit for the same cause. *Neal* v. *Mills*, 5 Blackf. 208.

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SECT. 157. The holder of any note or bill of exchange negotiable by the law merchant, or by any law of this state, may institute one suit against all the parties who may be liable to such holder; and no such holder shall be permitted, at any term of the circuit court, to institute more than one suit upon any one such note or bill. *

Suit by holder of a note, &c. against all the parties thereto, &c.

ARTICLE VII.

Of the action of replevin.

SECTION

158. Jurisdiction of circuit courts in such action.
159. When and in whose favor replevin will lie.
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161. Will not lie in favor of execution defendant, except for property exempt from execution.
162. Cases in which executors, &c. may maintain replevin.
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185. But he may still have his remedy on his bond.
186. Value of property as assessed recovered in suit on bond.
187. Measure of damages in suit on the replevin bond.
188. Measure of damages in case of special property, &c.

SECT. 158. The several circuit courts within this state are hereby invested with jurisdiction to issue writs of replevin, and try and determine the same in the manner and in the cases hereinafter prescribed.

Jurisdiction of circuit courts.

SECT. 159. When any personal goods shall be wrongfully taken, or unlawfully detained from the owner, or the person

When and in whose favor replevin will lie.

* The assignee of a promissory note, negotiable and payable at a branch of the state bank, may, by virtue of the statute, join the maker and endorsers of the note in one suit, but he cannot so join the maker and part of the endorsers, unless those not joined are dead. Although the declaration in such case show that the maker and part only of the endorsers are sued, it should not, on that account, be demurred to, but the non-joinder should be pleaded in abatement, unless the declaration show that the party omitted is alive. *Dillon, et al.*, v. *State Bank of Indiana*, 6 Blackf. 5. See also, *Pearce, et al.*, v. *Eustis*, 6 Blackf. 159.

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entitled to the possession thereof, or when any personal goods taken on execution or attachment, are claimed by any person, other than the defendant in the suit in which they are thus taken, such owner, or person entitled to the possession thereof, or such claimant may cause any such personal goods to be replevied by a writ to be sued out and prosecuted for that purpose. *

Replevin will not lie for goods, &c. taken for any tax &c.

SECT. 160. No replevin shall lie for any personal goods and chattels taken by virtue of any warrant or precept for the collection of any tax or assessment in pursuance of any statute of this state, by the person for whose tax or assessment such goods were taken.

Will not lie by defendant, unless for property exempt from execution.

SECT. 161. No replevin shall lie at the suit of any defendant in any execution or attachment, to recover any personal goods and chattels, taken by virtue of such execution or attachment, unless such goods and chattels are exempted by law from execution or attachment.

Cases in which executors, &c. may maintain replevin.

SECT. 162. Whenever executors or administrators, suing in the right of another, are authorized to maintain actions of trover, trespass, or trespass on the case, for any personal property wrongfully taken, or unlawfully detained, such executors or administrators may maintain actions of replevin for such property. †

County in which replevin may be brought

SECT. 163. Whenever an action of replevin shall be brought for the recovery of goods and chattels, it may be brought in any county in which such goods and chattels shall be unlawfully detained, except in cases of distress for rent, in which case the action shall be laid in the county where the distress was made.

Affidavit.

SECT. 164. Before any person shall be entitled to sue out a writ in such action, an affidavit must be made and filed in the proper clerk's office, by the plaintiff, or some one in his behalf, and sworn to before such clerk, or some person authorized to administer such oath.

Allegations required in the affidavit.

SECT. 165. Such affidavit must allege that the plaintiff in such action is,

1. The owner of the property described in such affidavit, or or that he is then lawfully entitled to the possession thereof. ‡

* The action of replevin is not limited to cases of distress, but lies in all cases of a tortious and unlawful taking and detention of goods and chattels. *Dagget* v. *Robbins*, 2 Blackf. 415.

Writs of replevin are issued out of the circuit court, and returned thither as writs in other cases, and the action of replevin is proceeded in and tried as other actions are. Ibid.

† See ante page 557.

‡ Replevin lies by a person not having the actual possession of goods when taken, provided he have at the time the general property, and the right of immediate possession. *Chinn* v. *Russell*, 2 Blackf. 172.

To sustain replevin, the plaintiff must have the general or special property in the goods, and a right to their immediate possession *Walpole* v. *Smith*, 4 Blackf. 304.

If goods seized by virtue of a legal precept or execution, be unlawfully taken out of the hands of the officer executing such process, he can support an action of replevin for them against the wrong-doer. *Fitch* v. *Dunn*, 3 Blackf. 142. *Walpole* v. *Smith*, 4 Blackf. 304.

The right of action ceases with the extinguishment of the special property of the claimant. A bailor cannot sue his bailee for a return, after his right of property in the

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2. That the same has not been taken as his property for any tax or assessment against him, levied by any law of this state, nor seized under any execution or attachment against his goods and chattels liable to execution.

3. That the goods and chattels sought to be replevied have been wrongfully taken and are unlawfully detained by the defendant, or are unlawfully detained, as the case may be.

4. Such affidavit shall specify the name or names of the plaintiff or plaintiffs, and the defendant or defendants; and also the property sought to be replevied, and the reasonable value thereof, and in what county the same is then believed to be detained.

Form of the writ.

SECT. 166. When such affidavit is made and filed as aforesaid with the clerk of the circuit court having jurisdiction, such clerk shall issue a writ of replevin, directed to the proper officer, which shall be substantially in the following form:

"The state of Indiana to the —— of —— county, greeting: Whereas, A— B— has filed in the clerk's office of the circuit court for the county aforesaid, an affidavit, alleging that C— D— has wrongfully taken and does unlawfully detain, (or "does unlawfully detain," as the case may be,) one horse, cow, (or whatever the article or articles of property may be, particularly describing the same, to be replevied,) of the alleged value of —— dollars. You are therefore hereby commanded to replevy the said goods and chattels, by taking them into your custody, and deliver the same to the said A— B—, if he will satisfy you by giving bond with sufficient sureties, as required by law, to duly prosecute his said action of replevin, with effect and without delay, and to return the aforesaid goods and chattels thus replevied, if return thereof shall be adjudged, and to pay all such sums of money as may be recovered against him hereupon; and also, in case you replevy said goods and chattels, or any part thereof, that you summon the said C—— D—— to appear before the judges of the circuit court of —— county aforesaid, on the (naming the proper return day of writs in personal actions,) to answer the said A— B— in the premises."*

Execution of the writ.

SECT. 167. Upon the receipt of the writ the sheriff shall forthwith proceed to execute the same by taking possession of the property specified therein, or so much thereof as he can find, and delivering the possession of the same to said plaintiff or his agent, and by summoning the defendant according to the tenor of the writ.

Plaintiff's bond to be executed to defendant.

SECT. 168. But before the sheriff or officer executing such writ shall deliver the property so replevied to the plaintiff, he shall take from such plaintiff, or some person on his behalf, a bond payable to the defendant, with sufficient surety, in the

thing bailed has been destroyed. When an execution and levy have been set aside, the officer's right of property acquired by the levy ceases. *Walpole* v. *Smith*, 4 Blackf. 304.

*In an action of replevin, the writ must contain a description of the goods for which the action is brought, but it need not show that the affidavit required by the statute has been made by the plaintiff. *Magee* v. *Siggerson*, 4 Blackf. 70.

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penalty of double the value of such property, with condition that the plaintiff will duly prosecute his said suit with effect and without delay, and that he will return said property to the defendant if such return be adjudged by the court, and will pay to the defendant all such sums of money as may be recovered against him by such defendant in said action for any cause whatever. *

Officer shall deliver bond to the defendant.

SECT. 169. The officer taking such bond shall deliver the same to said defendant whenever requested; and for any breach of the condition thereof, said defendant may bring an action against the obligors therein named, and shall recover such sum as shall be just and equitable.

Action thereon

Plaintiff failing to give bond, property to be returned to defendants.

SECT. 170. If, after such officer shall have replevied said goods and chattels, the plaintiff shall fail for twenty-four hours next after such replevin, to give bond to the acceptance of the sheriff as aforesaid, such officer shall immediately thereafter return said goods and chattels to such defendant, or the person from whose custody the same were taken, and take his receipt therefor.

Costs.

SECT. 171. Any costs necessarily occasioned by the keeping of any property from the time the same was thus replevied until such bond is given, or in case of failure to give such bond then until such property is returned to the person entitled thereto, shall be paid by the plaintiff to such sheriff; and such costs, in case of dispute, shall be such sum as the court shall deem reasonable.

Affidavit and bond may be amended.

SECT. 172. If the affidavit of the plaintiff is defective, his suit shall not be dismissed therefor, if he shall, within such time as the court shall prescribe, file an additional or supplemental affidavit, by which the defects in the original affidavit shall be cured; nor shall such suit be dismissed on account of any defect in his bond, if, within the time prescribed by the court, he shall file a sufficient bond.

Effect of such amendment.

SECT. 173. Such affidavit and bond, when filed, shall be to all intents and purposes, of the same force and effect as if they had been filed at the commencement of the action.

Different counts in declaration.

SECT. 174. The plaintiff in his declaration may insert different counts for an unlawful taking and detention, and for an unlawful detention, although the affidavit and writ may allege only an unlawful detention, or only an unlawful taking and detention.

* The sheriff cannot object to the replevin bond because it is not executed by the tenant, but by his surety alone. *Ridge* v. *Wilson et al.*, 1 Blackf. 409.

If goods taken on a distress warrant be replevied without objection to the replevin bond, and the time limited by law to replevy be expired, they cannot be retaken by virtue of such distress warrant on the ground that the replevin surety is insufficient. *Ridge* v. *Wilson et al.*, 1 Blackf. 409.

The sheriff is liable to an action on the case if he do not take such sureties as the law contemplates. It is held, however, under the statute of Geo. II, which is similar to ours, that the sheriff does not warrant the sufficiency of the sureties. If they were apparently good when taken, and the sheriff acted faithfully and with a reasonable degree of caution, he is excusable. *Hindle* v. *Blades*, 5 Taunt. 225.—*Scott* v. *Waithman*, 3 Stark. R. 168.—*Ridge* v. *Wilson et al.*, 1 Blackf. 409, note 2.

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ARTICLE 7. Pleadings.

SECT. 175. The plaintiff shall declare against the defendant within the same time as in other personal actions, and in case he shall neglect so to do, he shall be liable to the like judgment of a non-suit or discontinuance as in such actions; and upon filing a declaration, the same, as to the pleadings and trial, shall proceed as in other cases. *

Statement of place, &c.

SECT. 176. It shall not be necessary for the plaintiff to state in his declaration any other place than the county where such goods and chattels are alleged to have been taken or to be detained; except where the action shall be brought for the recovery of goods or chattels distrained.

Plea of the general issue &c. in case of a wrongful taking.

SECT. 177. When the unlawful taking of the property described in the declaration is complained of therein, the plea of the general issue shall be, as heretofore, that the defendant did not take the goods and chattels described in the declaration, or any of them, in manner and form as the plaintiff has alleged; and such plea shall put in issue, not only the taking of such goods and chattels, but also such taking in the place stated where the place is material. †

Same in case of a wrongful detention.

SECT. 178. When the action is founded on the wrongful detention of the goods and chattels, and the original taking is not complained of, the plea of the general issue shall be, that the defendant does not detain the goods and chattels specified in the declaration nor any part thereof, in manner and form as therein alleged, and such plea shall put in issue, not only the detention of such goods and chattels, but also the property of the plaintiff therein. ‡

Avowry, &c., in distress for rent.

SECT. 179. In replevin in case of distress for rent, the defendants may avow or make cognizance generally, that the plaintiff in replevin, or other tenant of the lands or tenements, whereon such distress was made, enjoyed the same under a grant or demise, or by any other title, at a certain rent or service during the time wherein the rent or service distrained for was incurred, which rent or service was then and still remains due; or that the place where the distress was made was parcel of certain tenements for which the rent or service distrained

* The action of replevin is proceeded in and tried as other actions are. *Dagget* v. *Robbins*, 2 Blackf. 415.

If the plaintiff, in an action of replevin, be nonsuited, he is not thereby barred from bringing another action of replevin; the merits of the cause not having been tried. This is the common law; and the statute in *England*, of Ed. I, prohibiting a second replevin after a nonsuit, is local to that kingdom and not in force here. Ibid.

† Replevin. *Pleas*, 1. That the defendant had not taken or detained the property. 2. Property in a stranger. 3. Property in the defendant. The plaintiff joined issue on the first plea, and replied to the second and third, property in himself. Verdict: "We find the property to be in the plaintiff." Judgment against the defendant for costs. *Held*, that this verdict did not authorize a judgment for the plaintiff, as the jury had not found that the horse had been taken or detained by the defendant. *Huff* v. *Gilbert*, 4 Blackf. 19.

‡ In replevin, for the unlawful detention of goods, non cepit is not a good plea; the general issue is non detinet. *Walpole* v. *Smith*, 4 Blackf. 304.

A plea that the property of the goods is in a stranger, not in the plaintiff is a good bar to the action of replevin. *Martin et al.* v. *Ray*, 1 Blackf. 291.

NOTE.—See forms of pleas of property in a note to *Martin* v. *Ray*, 1 Blackf. 292. For the form of the replication see *Litteral* v. *St. John*, 4 Blackf. 326, note 1.

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for was, at the time of such distress, and still remains due, without further setting forth the grant, tenure, demise, or title of such landlord or landlords, lessor or lessors. *

Several pleas to avowry, &c.

SECT. 180. The plaintiff may plead in answer to any avowry or cognizance, as many several matters as he shall think necessary for his defence.

Plaintiff's damages how assessed.

SECT. 181. If, upon the trial of the cause, the verdict be in favor of the plaintiff, the same jury shall assess the damages which he has sustained by the unlawful taking or detention of the property so replevied; and if judgment pass for the plaintiff by default or upon an issue of law, the damages shall be assessed by a jury upon a writ of inquiry.

Defendant may take judgment for a return, &c., and damages;

SECT. 182. If it appear, upon a non-suit of the plaintiff, or after a trial or otherwise, that the defendant is entitled to a return of the goods, he shall have judgment and execution therefor, accordingly, with damages for the detention thereof, which may be assessed by a writ of inquiry.†

May take judgment for the value of the property.

SECT. 183. The defendant, except in cases where the property replevied has been distrained, whenever he shall be entitled to a return of the property replevied, or to any part thereof, may take judgment against the plaintiff for the value of the defendant's interest in such property, with his damages for the detention thereof; in which case such value may be assessed as damages on the trial, or by a writ of inquiry, as the case shall require, upon which judgment he may have execution as in other cases.

May take such judgment in case of distress for rent.

SECT. 184. If the property replevied shall have been distrained for rent, the defendant, whenever entitled to a return, may proceed as follows:

May avow, &c. in such case.

1. If the defendant shall not have made an avowry or cognizance, and therein set forth the arrears of rent, he may make a suggestion on the record in the nature of an avowry or cognizance, for the rent in arrear, and a writ of inquiry shall be awarded to ascertain by a jury the sum in arrear at the time of such distress taken, and also the value of the property distrained; and upon such inquisition the defendant shall have judgment to recover against the plaintiff the value of the property thus dis-

* The warrant of a justice of the peace issued under the statute of 1824, commanding the constable to distrain for rent, is a justification to the officer in an action of replevin by the tenant, independently of the landlord's claim. *Harris* v. *McFaddin*, 2 Blackf. 71.

If the action of replevin be brought alone against the officer making the distress under the justice's warrant, and such officer justify under his warrant, and obtain judgment on a demurrer to his plea, he is entitled to a return of the goods. Ibid.

If the tenant wish to contest the landlord's right to distrain—to rely, for example, on non tenuit, or riens in arrear—he should institute his suit against the landlord. Ib.

An avowry for rent due need not show that a warrant founded on oath, had been taken out before making the distress; nor that the goods distrained belonged to the tenant; nor need it set out the particulars of the landlord's title. *Wright* v. *Mathews et al.*, 2 Blackf. 187.

See post section 184 of this Chapter.

† If an action of replevin be brought for taking several articles, and, on an issue as to the the plaintiff's property in them, he only prove himself entitled to a part, the defendant has a right to a return of the others, and to damages for the taking of them. In such case each party succeeds and each is entitled to his costs. *Wright* v. *Mathews et al.*, 2 Blackf. 187.

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trained, not to exceed such arrearages of rent, for which he shall have execution as in other cases.*

Same after demurrer.

2. If judgment shall have been given for the defendant upon demurrer, he may make the like suggestion of the arrears of rent, as above provided, if the same shall not have been already pleaded by him, and the court shall award a like writ of inquiry, upon which the same proceedings shall be had, and like judgment and execution as above provided.

After non-suit.

3. If in any of the cases specified in the preceding clauses of this section, the defendant shall have made an avowry or cognizance, and before the trial he shall, by the non-suit of the plaintiff, or otherwise, be entitled to have a return of the property adjudged to him, he may have a writ of inquiry awarded as before provided in this section, upon which the same proceedings shall be had and like judgment and execution as above provided.

Same.

4. If the plaintiff shall suffer a non-suit after proceeding to trial, or if the jury shall find against such plaintiff, then the jurors that are empannelled to try such issue, shall at the prayer of the defendant, enquire concerning the amount of rent in arrear, and the value of the property distrained; and thereupon the defendant shall have judgment and execution as above provided in this section.

Remedy for any balance of the rent.

5. If the value of the property distrained shall not be found to be equal to the arrears of rent distrained for, the party to whom such arrears were due, his executors, administrators, or assigns may distrain again for the residue of such arrears.

But may still have remedy on bond, &c.

SECT. 185. Notwithstanding the defendant may have elected to proceed under the last two sections, he shall not be precluded from resorting to his remedy on the plaintiff's bond, to him taken by the sheriff.†

* The defendant in replevin avowed the taking of the goods as a distress for rent due to him from the plaintiff. To this avowry the plaintiff pleaded non tenuit and riens in arrear. Issues were joined upon these pleas. There was a verdict for the defendant on both the issues; the jury finding the amount of the rent in arrear, but not the value of the goods distrained. The court *held*, that the common law judgment for a return of the goods to the defendant, and for his costs of suit, might be rendered on this verdict; but that there could be no judgment in his favor for the arrears of rent. *Larkin* v. *Wilburn*, 2 Blackf. 343. *Given* v. *Blann*, 3 Blackf. 64.

† A suit on a replevin bond, conditioned to prosecute the action of replevin with effect, and without delay, and to return the goods if a return be awarded, may be sustained, if the plaintiff in the action of replevin do not succeed, though there be no award of a return of the goods. *Brown* v. *Parker*, 5 Blackf. 291.

Debt on a replevin bond.—Pleas:

1. Non damnificatus.
2. If the plaintiff was injured, it was by his own wrong.
3 & 4. The goods belonged to the principal obligor.
5. The principal obligor was ready and willing to prosecute his writ of replevin with effect, but the court, at the instance of the plaintiff, (in the suit on the bond,) dismissed the cause for want of jurisdiction, on the ground of defects, apparent on the face of the affidavit and the writ; that no damages were recovered in the action of replevin, nor was a return of the property awarded.
6. The bond was executed without consideration.
7. The consideration of the bond was illegal.
8. No record of the replevin suit.
9. The same with the 5th.

Held, that these pleas, except the 8th, were insufficient. *Sherry, et al.*, v. *Foresman, et al.*, 6 Blackf. 56.

In a suit on a replevin bond, if the plaintiff demur to a plea, and there be judgment

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Value of property as assessed, recovered in suit on bond.

SECT. 186. In such case the amount recovered in such action of replevin, as the value of the property replevied, with interest thereon from the date of the judgment in replevin, shall be the measure of damages, to be added to the other damages which may be recovered in the suit on such bond.

Measure of damages in suit on the replevin bond.

SECT. 187. The measure of damages on the breaches assigned in any action on a replevin bond shall be the value of the property adjudged to be returned, and the damages and costs recovered in the action of replevin, remaining unpaid, subject to the provisions contained in the next following section.

Measure of damages in case of special property, &c.

SECT. 188. Whenever suit is brought on any such bond, and also in any case where the defendant in the action of replevin shall elect to inquire by a jury the value of the property replevied, with a view to take judgment therefor, if by reason of any special property, which the defendant in the action of replevin had in such property, or otherwise, he ought not, in strict justice, to recover in such action of replevin, nor in the suit on such bond, the value of such property, such damages may be assessed in lieu of such value, as shall have been really sustained.

ARTICLE VIII.

Of docketing causes; of filing the declaration; of the pleadings and making up the issues.

SECTION

189. Clerk to make up docket.
190. Order of docketing causes.
191. When declaration shall be filed.
192. Cause continued, if declaration not filed ten days before first day of court.
193. If writ served and declaration filed ten days before the term, cause to proceed to issue and trial.
194. Of the pleadings and making up the issues.
195. Party failing to plead.
196. Power of court to compel the completion of the issues.
197. If both parties fail, court may nonsuit plaintiff or continue the cause.
198. Clerk shall endorse time of filing pleas, &c.
199. Parties may plead several defences.
200. Pleas in abatement must be verified, &c. The time at which such pleas and special demurrers to the declaration must be filed.

SECTION

201. Plea of payment and tender of payment.
202. Plea of payment to action on penal bond, &c.
203. Payment after suit on such bond, &c.
204. Set-off.
205. Plea or notice of set-off.
206. Notice of set-off, how given, &c.
207. Such notice, certain as a declaration.
208. Defence as against set-off.
209. If matters of set-off exceed plaintiff's demand, statute of limitations shall apply to such excess.
210. Plaintiff to take judgment for residue; or if set-off equal to plaintiff's claim, judgment shall be for defendant.
211. If a balance be due defendant, he shall have judgment therefor; exception.
212. Judgment in case of balance against executor.
213. Same.

against him because his declaration is bad, he may sue again for the same cause of action. Ib.

As to a release, see *Thomas* v. *Wilson, et al.*, 6 Blackf. 203.

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SECTION
214. Plea of failure of consideration.
215. Such failure may be shown in certain cases, when not pleaded.
216. Certain pleas, replications, &c. to be sworn to; effect if not sworn to.
217. Denial of assignment under oath.
218. Proof of names of parties in certain cases not necessary, unless denied specially, &c.
219. Of payment at a particular place.
220. Subsequent demand and failure to pay may be shown.
221. In suits against officers, &c., defendant may plead general isssue, and give matters of defence in evidence.

SECTION
222. How defence may be set up in suits against a party for acts done under a statute.
223. Replication in such case; evidence.
224. If plaintiff in any case fail to take judgment when he might, the defendant may plead to the merits, &c.
225. After interlocutory judgment, the court may set the same aside, and permit the party to plead, &c.
226. Party may demur at any time before trial.
227. Judgment on demurrer, without regarding certain defects, &c.

Clerk to make up docket.

SECT. 189. The clerk, within three weeks after the adjournment of the court, shall make out his docket for the succeeding term, wherein he shall docket all suits at law then pending in such court, and also all causes which may be commenced previous to the first day of the next term.

Order of docketing causes.

SECT. 190. Such clerk shall set as many cases for each day as in his opinion will be disposed of by the court, always docketing the suits continued from the preceding term, and actions of covenant debt and assumpsit, immediately after the criminal causes.*

When declaration shall be filed.

SECT. 191. The plaintiff may file his declaration before or after the issuing of the writ; but if the writ issues before the filing of the declaration, the plaintiff shall file his declaration on or before the calling of the cause, at the term to which the writ is returnable; or on failure thereof, the suit may for that cause be dismissed.

Cause continued if declaration not filed, &c., ten days before first day of court.

SECT. 192. If it shall appear that the process was not executed, and that the declaration was not filed ten days before the return day of such process, the cause shall be continued until the next term of the court, unless both parties consent to a trial.

If writ served and declaration filed 10 days before the term, cause to proceed to issue and trial.

SECT. 193. Whenever the writ shall have been served, and the declaration filed ten days before the first day of the term to which the writ is returnable, such suit shall proceed to issue and trial at such term, whether the writ issued before or after the filing of the declaration. †

Of the pleadings and making up issues.

SECT. 194. The pleadings may be filed and issue joined, at any time before the calling of the cause, without any rule therefor: and when the cause is called, if no plea has been filed,

* See the last section of Chapter 54.

† A declaration was filed against two persons, and the writ executed on both. Neither of them appeared; and one only having been summoned ten days before the return day, judgment was taken by default against him alone. *Held*, that the proceeding was erroneous: the process having been served on both the defendants, judgment could not be taken against one alone. Aliter, had the process been executed on one only, and returned as to the other, non est inventus. *Helm* v. *Vanvleet*, 1 Blackf. 342.

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the defendant may plead, and the plaintiff reply, and so on, within such time during the term as the court shall deem reasonable, till the issues in law or of fact shall be made up.*

Party failing to plead.

SECT. 195. If either party shall fail to file his part of the pleadings when required, the court may direct judgment to be entered against him for such failure, unless for good cause shown, the court give him further day in that term, or at or before the next term, to file such pleading, on the payment of the costs occasioned by such postponement. †

Power of the court to compel the completion of the issues.

SECT. 196. If, from any cause, either party shall fail to file his part of the pleadings, or to make up the issues in the time herein required, or that may be prescribed by the court, the court shall have the same power at each calling of the cause to require the completion of the issues, and in default thereof, to direct the proper judgment to be entered against the party failing, for such default.

If both parties fail, court may nonsuit plaintiff or continue the cause.

SECT. 197. If on any calling of the cause, the plaintiff fail to prosecute, and the defendant fail to appear, the court may either enter a non-suit against the plaintiff, or continue the cause. ‡

Clerk shall endorse time of filing pleas, &c.

SECT. 198. The clerk shall endorse on all pleas and pleadings, the time when they were filed, and note such filing in the order book.

Parties may plead several defences.

SECT. 199. The plaintiff in replevin, and the defendant in all actions, may plead as many several matters in law or of fact, as he may deem necessary for his defence.

Pleas in abatement, &c. must be verified.

The time at which such pleas and special demurrers must be filed.

SECT. 200. Pleas to the jurisdiction of the court, and pleas in abatement, and all dilatory pleas which do not involve the merits of the action, shall not be received by any court, unless the truth thereof shall be verified by oath or affirmation; and all such pleas, and also special demurrers to the declaration, shall be filed on or before the day for which the cause is docketed, at the first term at which it stands for trial, and shall not be received at any time afterwards. §

* The issues must be made up before the jury are sworn, excepting only that a similitu may be dispensed with. *Swan* v. *Rary*, 2 Blackf. 291.

If a defence be filed which is not relevant to the cause, it may be rejected on motion. *Evans, et al.*, v. *Shoemaker*, 2 Blackf. 237

† In a case of judgment by default, the record must show that the defendant had notice of the suit, or the judgment is a nullity. *Bliss* v. *Wilson*, 4 Blackf. 169.

A judgment cannot be taken against the defendant by default, if there are pleas in bar on file upon which issues are joined. The only course for the plaintiff to take is to have a jury impannelled to try the issues on the pleas in the same manner as if the defendant had appeared and defended the cause. *Harris* v. *the Muskingum Manufacturing Company*, 4 Blackf. 267.

‡ The court has no authority to non-suit a plaintiff against his consent. *Boor* v. *Davis, et. al.*, 5 Blackf. 115.

§ See post sections 233 and 234 of this chapter.

If there be a justice's certificate attached to a plea in abatement, stating that the plea had been sworn to before him, the plea must be considered, under the statute, as sufficiently verified. *Blake* v. *Nichols*, 4 Blackf. 311.

If such certificate be imperfect, and the plea have been properly sworn to, the court should permit the justice to amend the certificate. Ibid.

A plea in abatement may be filed after the day for which the cause is docketed, and

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Plea of payment and tender of payment.

SECT. 201. When an action shall be brought upon a single bill, or on any contract for the payment of money, or upon a judgment, or when a writ of scire facias is brought upon any judgment, or recognizance, the defendant may plead payment, or tender of payment, of the sum due on such bill, judgment, or recognizance, in bar of such action or writ. *

Plea of payment to action on penal bond, &c.

SECT. 202. To any action which shall be brought on any bond, or other instrument in writing, which has a condition by which the same is to become void, on the payment of a less sum of money, the defendant may plead payment, or tender of payment, of the principal sum and interest, due by such condition, at any time before the commencement of such action, in bar thereof, although such payment, or tender of payment, was not made at the time prescribed in such bond or instrument.

after it has been called, provided it be filed as soon as the proceedings of the plaintiff and the court will permit. *Clark, et al.*, v. *Hite, et al.*, 5 Blackf. 167.

A plea in abatement may not only be filed at any time before the day on which the cause is set for trial, but it may also be filed at any time on that day, whether the court be in session or not, unless the cause shall have been called in its order and regularly disposed of. *Haines, et al.*, v. *Gurley*, 5 Blackf. 269.

It is not necessary that the affidavit attached to a plea in abatement should be entitled of the term at which it is filed. Ibid.

A defendant, by obliging the plaintiff to give security for costs, does not waive the right to plead the infancy of the plaintiff in abatement. *Bouche* v. *Ryan*, 3 Blackf. 472.

If a person execute a written promise by a wrong name, he must be sued on the instrument in that name. *Worster* v. *Lyons*, 5 Blackf. 60.

The pendency of a suit previously commenced by the plaintiff against the defendant, for the same cause of action, may be pleaded in abatement, but the plea must show that the suits are founded on the same cause of action. *Tracy* v. *Reed*, 4 Blackf. 56.

The pendency of a subsequent suit cannot be pleaded, either in bar or abatement, to a prior suit for the same cause. *Sherwood* v. *Hammond*, 4 Blackf. 504.

In an action of assumpsit against *A*, the pendency of a former suit for the same cause, brought by the plaintiff agninst *A* and *B*, though there be a misjoinder of defendants, may be pleaded in abatement. *Atkinson* v. *State Bank*, 5 Blackf. 84.

To a declaration in slander, consisting of four counts, the defendant pleaded in abatement to the whole declaration, that another action was pending for the same cause of action contained in two of the counts. *Held*, that the plea was bad on general demurrer. *Bigelow* v. *Farmer*, 5 Blackf. 31.

A plea in abatement that at and before the date of the writ, which issued in one county and was directed to the sheriff of another, and ever since the defendant resided in the county in which the writ issued, is sufficient. *Clark et al.*, v. *Hite et al.*, 5 Blackf. 167.

A judgment for the plaintiff on a demurrer to a plea in abatement is not final, but only a respondeat ouster. *Lambert* v. *Lagow*, 1 Blackf. 388. *Clark, et al.*, v. *Hite, et al.*, 5 Blackf. 167.

If an issue of fact be joined on a plea in abatement, and the jury find for the plaintiff, the judgment should be peremptory, but if it only be respondeat ouster, that cannot be assigned for error by the defendant, as it is for his advantage. *John, et al.*, v. *Clayton*, 1 Blackf. 54.

The plaintiff on the trial of an issue to the country on a plea in abatement, should prove his damages, for, without such proof, though he sustain the issue, there must be a venire de novo. *Neal* v. *Mills*, 5 Blackf. 208.

Where the plaintiff replies nul tiel record to a plea of the pendency of a prior suit, and the issue is found for him, the judgment is that the defendant answer over. *Neal* v. *Mills*, 5 Blackf. 208.

* The holder of a note for the payment of money is not obliged to receive a payment on it from the maker of part of the amount due. *Jennings* v. *Shriver*, 5 Blackf. 37.

The payment of a less sum, after a debt becomes due, cannot be pleaded in satisfaction of the whole debt. 5 Blackf. 72.

Payment of a part before the day in full satisfaction, and acceptance thereof in full satisfaction, may be pleaded in bar to an action of debt. If a chattel of any kind be, by the agreement of the parties, given and accepted in satisfaction of the debt, it is a good discharge, although it be of less value than the debt. In the case of unliquidated damages, the acceptance of a smaller sum than the plaintiff may have originally claimed, is a satisfaction of the whole demand. Ibid. Note 1.

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Payment after suit on the bond.

SECT. 203. Whenever any action on such bond or instrument specified in the last preceding section shall be pending, the defendant may, at any time before judgment rendered therein, pay to the plaintiff, or bring into court for the plaintiff's use, the principal sum, and interest due by the condition of such bond or instrument, together with the costs incurred in said action, and thereupon such action shall be discontinued; or the defendant may bring into court such principal sum and interest, and judgment shall be given against him for the costs only.

Set-off.

SECT. 204. When there are mutual debts or demands between the plaintiff and defendant in any action, one demand may be set off against the other, as provided in this section, that is to say,

Nature of demand which may be set-off.

1. It must be a demand arising upon judgment, or upon a contract, express or implied, whether such contract be written or unwritten, sealed or without a seal; and if it be founded upon a bond, or other contract having a penalty, the sum equitably due by virtue of the condition only shall be set off; but it must be a demand for real or personal property sold, or for money paid, or for money had and received, or for services done, or it must be for a sum that is liquidated, or one that can be ascertained by calculation.

Must be due, &c.

2. It must be due to the defendant in his own right, either as the original creditor or payee, or as being the assignee or owner thereof. †

Must exist at the commencement of suit.

3. It must have existed at the time of the commencement of the suit, and must then have belonged to the defendant.

Allowed in actions on demands which themselves could be set-off.

4. The set-off shall be allowed in all actions founded on demands which could themselves be the subject of set-off, according to law, and no others.

In case of several plaintiffs and defendants.

5. If there be several plaintiffs, the demand set off must be due from them all jointly; if there are several defendants, it must be due to them all jointly, except when the person with whom a contract is made has a dormant partner, and a suit is brought on such contract, by or against the partners jointly, any demand due to or from the person with whom the contract was made, may be set off in like manner as if such dormant partner had not been joined in the suit. ‡

To a suit for unliquidated damages, the defendant may plead that he had delivered to the plaintiff, and that the plaintiff had received from him, goods of less value than the sum claimed, in satisfaction of the demand. *Bateman* v. *Daniels, et al.*, 5 Blackf. 71.

† A promissory note for the payment of money, executed by the plaintiff to a third person, and assigned to the defendant before the commencement of the suit, is a legal matter of set-off. *Hurd* v. *Earl*, 4 Blackf. 184. See *Hurd* v. *Earl*, 6 Blackf. 39.

‡ In a suit against *A*, on a joint and several note of *A* and *B*, the defendant cannot set off a debt due by the plaintiff to *B*. And even if the suit should be against *A* and *B* on the note, a debt due by the plaintiff to *B*, would not, for the want of mutuality, be a legal matter of set-off. *Jennings* v. *Shriver*, 5 Blackf. 37.

A debt due by *A* and *B* to *C* cannot be set-off, either at law or equity, against a debt due by *C* to *A* alone. *Elder* v. *Laswell*, 2 Blackf. 349. See also, *Wasson* v. *Gould*, 3 Blackf 18—*M'Kinney* v. *Bellows*, 3 Blackf. 31.

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6. If the contract on which the suit is brought has been assigned to the plaintiff, he may set off any demand existing against such plaintiff, or any assignee of such contract, before notice of such assignment, if the demand be such as might have been set off against such plaintiff, or any such assignee, while the contract belonged to him. * Assigned demand.

7. If the action is brought by one person in trust, or for the use of another, the defendant may set off any demand against the person for whose use or benefit the action is brought, in like manner as if that person were the plaintiff. In case of trustees.

8. But in the case of an action by the trustees of an insolvent, demands shall be allowed to be set off, only as specified in the provisions of the Revised Statutes respecting insolvent debtors. Insolvent.

9. In actions by executors and administrators, demands against their testators and intestates, which belonged to the defendant at the time of their death, may be set off in the same manner as if the action had been brought by the deceased. Executors and administrators.

10. In actions against executors and administrators, and trustees, and others in their representative character, the defendant may set off demands which belonged to their testator or intestate, or those whom they represent, in the same manner as the person represented would have been entitled to set off the same in an action against himself. Same.

11. In actions brought by or against executors, administrators, trustees, or others in their representative character, no demand shall be set off that is due to or from such executors, administrators, or trustees, or others in their own right. Same.

SECT. 205. To entitle the defendant to a set-off, he must plead, or give notice of such set-off. Plea or notice of set-off.

SECT. 206. Such notice must be given, together with the plea of the general issue, in those actions in which such issue may be pleaded; and in those actions in which it cannot be pleaded, the defendant may plead payment, and give notice of the set-off, with such plea; and the filing of any such notice with the plea, shall be a sufficient notification thereof to the adverse party. Notice, how given.

SECT. 207. The statement containing any notice of set-off, shall be as certain in substance as would be required in a declaration, and the court may allow amendments of such notice, as in like cases of pleas. Notice certain as a declaration.

SECT. 208. When issue is joined on the plea of set-off, or other proper plea with notice of the set-off, the plaintiff shall be entitled to every ground of defence against such set-off, of which he might have availed himself under the general issue, or by any form of pleading in an action brought against him on the demand thus alleged as a set-off. Defence as against set-off.

SECT. 209. When the sum of the matters of set-off alleged exceed the amount of the plaintiff's demand, the provisions of law limiting personal actions, if applicable to the set-off, may be If matters of set-off exceed plaintiff's demand, statute of limitation

* See *Hanna* v. *Ewing*, 3 Blackf. 34.

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replied, so as to prevent a recovery by the defendant of such excess.

shall apply to such excess. Plaintiff to take judgment for residue, or if set-off equal to plaintiff's claim, judgment shall be for defendant. If a balance due defendant, he shall have judgment therefor. Exception.

SECT. 210. If the set-off established is less than the plaintiff's debt or demand, he shall have judgment for the residue only; if such set-off be equal to the plaintiff's debt or demand, the defendant shall have judgment for his costs.

SECT. 211. If there be found a balance due from the plaintiff, judgment shall be rendered for the defendant for the amount of such balance; but no such judgment shall be rendered when the contract or demand which is the subject of the action shall have been assigned before the commencement of the suit, for any balance due from any other person than the plaintiff in the action.

Judgment in case of balance against executor, &c.

SECT. 212. When, upon any set off against an executor or administrator, a balance shall be found due to the defendant, the judgment therefor shall be in the same form, and have the same effect, as if the suit had been originally commenced by the defendant, except as stated in the following section.

Same.

SECT. 213. If at the time of the trial of such action, the executor or administrator shall have instituted proceedings to settle the estate of the deceased as insolvent, judgment shall be rendered for the defendant for such balance, but no execution shall issue therefor, and the court shall order it to be certified by the clerk to the proper probate court, that it may be laid before such court and settled as other judgments of creditors against the estate of the deceased.

Plea of failure of consideration, &c.

SECT. 214. In any action founded upon any specialty, or other contract, conveyances of real estate, and instruments negotiable by the law merchant excepted, the defendant, by special plea, may allege the want or failure of the consideration, or any part thereof; and if any specialty, or other contract, excepting as aforesaid, is alleged in any plea, replication, or other pleadings, by any of the parties, the other party may in like manner allege the want or failure of the consideration, or any part thereof.*

*To an action on a specialty, the want of failure of consideration may be pleaded in bar under the statute, but not at common law. *Leonard* v. *Bates*, 1 Blackf. 172. *Patterson* v. *Salmon*, 3 Blackf. 131.

The act authorizing defendants to plead a want or failure of consideration specially, is cumulative, and does not take away the party's right, existing before the act, to avail himself of such a defence under the general issue. *Jamison* v. *Buckner*, 2 Blackf. 77. *Tucker* v. *Tipton*, 4 Blackf. 529—4 Blackf. 556. *Thomas* v. *Quick*, 5 Blackf 334, note 1.

To an action of debt on a bond, the defendant may plead generally that the bond was obtained by fraud, covin, and misrepresentation; but the evidence, under this plea, must be confined to the fraud of the obligee, in relation to the execution of the bond. If the defence is founded upon a failure, in whole or in part, of the consideration, or upon the false, fraudulent, and covinous acts and representations of the obligee, respecting the consideration which influenced the obligor to become bound, the special facts must be averred. *Huston* v. *Williams*, 3 Blackf. 170. *Clark* v. *Harrison*, 5 Blackf. 302. And see *Elliott* v. *Coggshall*, 4 Blackf. 238.

To debt on a promissory note the defendant may plead in general terms, that the note was made without any good or valuable condsideration whatever. If there was no consideration there are no special facts to aver. Such a plea, however, will not be available on the trial, if there was any consideration whatever, no matter how fraudulent or trifling that consideration may have been. *Kernodle* v. *Hunt*, 4 Blackf. 57.

A plea, alleging that the obligation was obtained by fraud, covin, and misrepresentation, to-wit, by the plaintiff's falsely representing the article sold to the defendant, which was the consideration of the obligation, to be good and merchantable; that it was not good and merchantable, but wholly without value, is a good plea. *Wynn* v. *Hiday*,

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SECT. 215. Whenever in any action, any such specialty, or other contract, shall be given in evidence without being specially pleaded, the other party may, excepting as aforesaid, prove the want or failure in whole or in part of the consideration thereof. Such failure may be shown in certain cases.

SECT. 216. The plea of non est factum, non-assignment, or any other plea, replication, or other pleading, denying, or requiring proof of the execution or assignment of any bond, bill, release, or other instrument in writing, which is the foundation of any suit or defence, and which is specially set forth as such in the declaration, plea, or other pleadings, shall not impose the necessity of such proof, unless verified by oath or affirmation.* Certain pleas, replications, &c. to be sworn to, &c. Effect if not sworn to.

SECT. 217. When any such plea, or other pleading specified in the preceding section, denies or requires proof of any assignment, the oath or affirmation shall be, that the party has reason to believe, and does verily believe, that such assignment was not made before the suit was commenced. Denial of assignment under oath.

SECT. 218. Whenever any bill of exchange, note, obligation, or other contract in writing, shall be declared upon, pleaded, or replied in any action as payable to the party declaring upon, pleading, or replying the same, or to any other person, proof of the names of the makers, assignors, obligors, assignees, payees, or obligees of any such bill, note, obligation, or contract, shall not be necessary, unless the same shall be put in issue by some form of pleading verified by affidavit. Proof of names of parties not necessary unless denied specially.

SECT. 219. In any action or defence founded on any bill of exchange, note, obligation, or other contract for the payment of money, to be paid at a particular place, it shall not be necessary Of payment at a particular place.

2 Blackf. 123. But a plea averring the article to be of no value to the defendant, is insufficient. *Howard* v. *Cadwalader*, 5 Blackf. 225. And see *Kernodle* v. *Hunt*, 4 Blackf. 57.

It is not sufficient to allege in a plea to an action on a note, that the payee represented the article or thing constituting the consideration of the note to be useful and valuable, but which was in fact of no use or value to the defendant. The defendant must specify the particular defect or insufficiency on which he intends to rely. *Kernodle* v. *Hunt*, 4 Blackf. 57. See *Howard* v. *Cadwalader*, 5 Blackf. 225. *Wynn* v. *Hiday*, 2 Blackf. 123.

A replication to a plea alleging a failure of consideration, that the note on which the action is brought was given for a good and valuable consideration, without fraud, &c., is not sufficient on special demurrer. The plaintiff in his replication might have denied that the notes were given for the consideration alleged in the plea, &c.; or that the consideration had not failed in manner and form, &c. *Kernodle* v. *Hunt*, 4 Blackf. 57. See, also, *Bowers* v. *Trever*, 5 Blackf. 24. *Farmer* v. *Fairman*, Id. 257. *Thomas* v. *Quick*, Id. 334.

To debt on a writing obligatory for the payment of money, the defendant pleaded that the obligation had beeen given for a pair of mill stones, fraudulently represented to be good, &c., but which were of no value.

BLACKFORD, J.—According to the statute, the defendant may plead to an action on a specialty like the present, the want or failure of consideration, or any part of it. The plaintiffs contend that where there is a plea of a total failure of consideration, under this statute, the whole plea must be proved, or the defence amounts to nothing. In this we think he is mistaken. If the defendant under his plea, suitable to the case, of a total failure of consideration, prove, in addition to the fraudulent representations, or to the breach of warranty, that the article is of no value, or has been returned, or tendered within a reasonable time, he defeats the action. But when the article is worth something, and has not been returned or tendered, the plaintiff is entitled to the value. This we conceive to be the fair construction of the statute, and one which will prevent a multiplicity of lawsuits, and tend to the furtherance of justice. *Wynn* v. *Hiday*, 2 Blackf. 123. *Howard* v. *Cadwalader*, 5 Blackf. 225. See also the note of the reporter to the above case of *Wynn* v. *Hiday*, and the authorities there cited.

*The statute requiring an oath to a plea, replication, &c., denying the execution of an instrument of writing, &c., does not dispense with the production of the instrument on the trial; it only excuses proof of the execution of the instrument when such plea, &c., is without oath. *Fosdick* v. *Starbuck*, 4 Blackf. 417.

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to aver in the pleadings, nor to prove on the trial, a demand of payment at such place; but in all such cases, the opposite party under the proper issue may show on the trial his readiness to pay such debt or demand at the place specified in the bill, note, obligation, or other contract.

Subsequent demand and failure to pay may be shown.

SECT. 220. When such readiness to pay at the place is pleaded, or is shown under the proper issue, the opposite party may reply, and prove, or may show under such issue, a subsequent demand at the place of payment, and a failure to pay prior to the commencement of the action.

In suits against officers and others, defendant may plead general issue, and give matters of defence in evidence.

SECT. 221. In every action against any officer appointed under the authority of the state, or elected by the people of the state, or of any county, congressional, or other township, or of any district, or against any person appointed pursuant to the provisions of law, to execute the duties of any office, for or concerning any act done by such officer or person by virtue of his office or authority, and in every action against any other person, who, by the commandment of such officer or person, or in his aid or assistance does any thing touching the duties of such office or appointment, the defendant may plead the general issue, and give the provisions of law and the special matter in evidence under such plea.

Suits against a party for acts done under a statute.

SECT. 222. In every action brought against any person for any act done by authority of any statute of this state, the defendant may plead not guilty, or may make avowry, cognizance, or justification of the act done, alleging therein that the same was done by the authority of such statute, merely referring thereto with sufficient certainty to ascertain the same, without reciting any matter contained in such statute.

Replication in such case.

SECT. 223. To every such plea the plaintiff may reply, that the defendant did the act complained of in his own wrong without the authority of any statute of this state. Upon the trial under the general issue, as specified in the preceding section, or of any issue joined as prescribed in this and the preceding section, the whole matter may be given in evidence by both parties.

Evidence.

If plaintiff fail to take judgment, the defendant may plead to the merits.

SECT. 224. When the plaintiff might have take an interlocutory judgment, but shall have failed so to do, the defendant may file any plea to the merits of the action.

After interlocutory judgment, the court may set the same aside and permit the party to plead, &c.

SECT. 225. After interlocutory judgment, and before a writ of inquiry is executed, the court may, in their discretion, set aside the interlocutory judgment, and give the defendant leave to file a plea to the merits, saving to the plaintiff the right to a trial or continuance of the cause.

Party may demur at any time before trial

SECT. 226. At any stage of the pleadings, or after issue joined and before trial, either party may withdraw any of his previous pleadings, and file a general demurrer to the next previous pleading of his adversary, and such demurrer shall be joined.

Judgment on demurrer with-

SECT. 227. When demurrer is joined in any action, the court shall proceed and give judgment without regarding any

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defect or imperfection in the writ, return, declaration, or other pleading, so as sufficient matter shall appear in the pleadings to enable the court to give judgment according to the very right of the case, unless such defect or imperfection be specially expressed in the demurrer.* ARTICLE 9. out regarding certain defects.

ARTICLE IX.

Of the amendment of the pleadings and proceedings before and after judgment, and of continuances on account of amendments of the pleadings.

SECTION
228. Amendments may be made by leave of the court at any time before the trial.
229. Amendments, when filed.
230. Amendments in matter of form, trial not delayed.
231. Amendments of declaration, &c. in substance, adverse party entitled to a continuance.
232. What amendments shall entitle adverse party to a continuance.
233. No special demurrer after continuance.
234. Plea in abatement to amended declaration.
235. Capias, etc., not amendable in the return day thereof.
236. Judgment after verdict, default, etc. not to be stayed nor reversed, etc. on account of defects, etc.
237. Defects, etc., amended in the court in which the record or judgment is brought by appeal or error.
238. Returns by court, etc., to another court, amendable.
239. Defects in award of venire, etc. where amendable.
240. Variances between the record and instruments, etc., adduced on the trial, amendable.
241. No amendment without leave of the court, etc.
242. Suits and proceedings to which this article shall extend.

SECT. 228. The court in which any action may be pending may give leave to amend any process, pleading, or proceeding in such action, either in form or substance, for the furtherance of justice, at the costs of the party amending, at any time before commencing the trial. Amendments made by leave of the court any time before trial.

SECT. 229. Every amendment to the declaration or other pleadings shall be filed immediately, unless the court, for good cause shown, give further day. Amendments when filed.

SECT. 230. If the amendment be in matter of form, the trial shall not be thereby delayed. Matter of form trial not delayed.

*A party has a right to withdraw a demurrer at any time before the judgment on it is recorded unless the demurrer be frivolous. *Call et al.* v. *Ewing*, 1 Blackf. 301.

If, upon a demurrer to a plea being overruled, the plaintiff withdraw the demurrer and reply, he cannot afterwards object, on error, to the overruling of the demurrer. *Early* v. *Patterson*, 4 Blackf. 449.

If a defendant, on a demurrer to one of his pleas being overruled, do not ask for a judgment for the costs of the issue in law, he cannot assign for error the omission of the court to render such judgment. *Richardson* v. *The St. Joseph Iron Company*, 5 Blackf 146.

If a declaration contain one good count, a demurrer to the whole declaration cannot be sustained. *Bishop* v *Yeazle*, 6 Blackf. 127.

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Amendment of declaration in substance, adverse party entitled to a continuance.

SECT. 231. If the plaintiff amend his declaration in matter of substance; or if either party amend his pleadings in matter of substance, after issue is joined and the cause is called for trial, but before entering upon the trial thereof, the other party may plead thereto immediately, whereupon the cause shall proceed to issue and trial as if no amendment had been made; or if the adverse party demand it, he shall be entitled to a continuance of the cause until the next term, at the costs of the party making such amendment.*

What amendments entitle to a continuance.

SECT. 232. No other amendments except such as are specified in the preceding section, shall entitle either party to a continuance to the next term of the court.

No demurrer or plea in abatement after continuance.

SECT. 233. If either party enforce a continuance of the cause to another term, on account of any amendment, he shall not, after obtaining such continuance, be allowed to file any special demurrer to such amended pleading.

Plea in abatement to amended declaration.

SECT. 234. When any declaration or process is amended in matter of substance by the plaintiff, after the time has elapsed within which a plea in abatement could have been properly filed, the defendant may plead in abatement thereto, within such time as the court shall rule him to plead; but such plea shall not be received unless such matter in abatement is pleadable by reason of such amendment.

Capias, &c., not amendable in the return day thereof.

SECT. 235. Process by which any action shall have been commenced, and on which the defendant shall have been arrested, shall not be amended in the return day thereof.

Defects after verdict, default, &c., not to stay judgment, &c.

SECT. 236. When a verdict shall have been rendered in any case, the judgment shall not be stayed thereon, nor shall the judgment on such verdict, or any judgment upon confession, default, nihil dicit, or non sum informatus be reversed, impaired, or in any way affected by reason of the following imperfections, omissions, matters or things, or any of them, in the process, pleadings, proceedings, or record, namely:

Want of writ.

1. For want of any writ, original or judicial; nor

Defect as to process.

2. For any default or defect in process; or for misconceiving any process or awarding the same to a wrong officer; or for the want of any suggestion for awarding process; or for any insufficient suggestion; nor

Return, &c.

3. For any imperfect or insufficient return of any sheriff or other officer; or that the name of such officer is not set to any return actually made by him; nor

Variance between writ and declaration, &c.

4. For any variance between the original writ, bill, plaint, and declaration, or between either of them; nor,

Mispleading, jeofail, &c.

5. For any mispleading, miscontinuance, or discontinuance, insufficient pleading, jeofail, lack of color, or misjoining of issue; nor,

* A declaration in covenant, not showing the writing declared on to be under seal, was amended by the insertion of words describing the instrument as a writing obligatory. *Held*, that this was an amendment in substance, and entitled the defendant, under the statute, to a continuance. *Kelly* v. *Duignan*, 2 Blackf. 420.

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6. For the want of any warrant of attorney by either party, except in cases of judgment of confession, where such warrant is expressly required by law; nor, — Warrant of attorney.

7. For any party under twenty-one years of age, having appeared by attorney, if the verdict or judgment be for him; nor, — Appearance of infant.

8. For the want of any allegation or averment on account of which omission a special demurrer could have been maintained; nor, — Special demurrer.

9. For omitting any allegation or averment of any matter, without proving which the jury ought not to have given such verdict; nor, — Omitting allegation, &c

10. For any mistake in the name of any person or party, or in any sum of money, or in the description of any property, or in reciting or stating any day, month, or year, when the correct name, time, sum, or description, shall have been once rightly alleged in any of the pleadings or proceedings; nor, — Mistake, misdescription, &c. of party, property, day, year, &c.

11. For a mistake in the name of any juror or officer; nor, — Or juror, or officer.

12. For the want of a right venue, if the cause was tried by a jury of the right county; nor, — Want of right venue.

13. For any informality in entering a judgment, or making up the record thereof, or in any continuance, or other entry upon such record; nor, — Informality, in judgment, &c., or continuance.

14. For any other default or negligence of any clerk or officer of the court, or of the parties, or their attorneys, by which neither party shall have been prejudiced. — Default, &c. of clerk, &c.

SECT. 237. The omissions, imperfections, defects, and variances, in the preceding section enumerated, and all others of the like nature, not being against the right and justice of the matter of the suit, and not altering the issue between the parties, or the trial, shall be supplied and amended by the court where the judgment is given, or by the court into which such judgment shall be removed by appeal or writ of error. — Defects, &c. amended in the court in which the record is.

SECT. 238. All returns made by any court, or subordinate tribunal to any court, may be amended in matter of form by the court to which such return shall be made, as well before as after judgment. — Returns by court, &c. to any court amendable in form, &c.

SECT. 239. Any imperfection or defect in the award of any venire, or any omission to award such venire on the record, may be amended or supplied by the court in which such record is. — Defect in award of venire, &c.

SECT. 240. The court may, in its discretion, at any time during the trial, permit either party to amend any variance between any record, document, or written instrument adduced on such trial and the record, declaration, plea, or other pleading in the cause then pending before the court, and also in all other matters or testimony which the court shall adjudge not material to the just merits of the case, and by which the opposite party cannot be prejudiced in the conduct of his action, prosecution, or — Variances between the record and instruments, &c. adduced on the trial amendable.

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defence; and either party aggrieved by the decision of the court therein, may except to such decision as in other cases.*

No amendment without the leave, &c. of the court.

SECT. 241. No process, pleading, or record shall be amended or impaired by the clerk or other officer of any court, or any other person, without the order of such court, or of some other court of competent authority.

Suits and proceedings to which this article shall extend.

SECT. 242. The provisions of this article shall extend to all actions in courts of law, and to all suits for the recovery of any debt due to the state of Indiana; and also to all actions for penalties and forfeitures, to all writs of mandamus and prohibition, to all informations in the nature of a quo warranto, to writs of scire facias, and to the proceedings therein, and to proceedings in partition, and the assignment of dower.

NOTE. If land be sold on execution which, as to the amount, varies from the judgment, the purchaser, or person claiming under him, may have the execution amended by the judgment. *Doe* v. *Rue*, 4 Blackf. 263.

A mistake in the amount of an execution is amendable, at any time, by the judgment. *M'Call* v. *Trevor*, 4 Blackf. 496.

Joel Williams filed a præcipe in his right name for a writ, the clerk issued the writ in the name of *Joel Williamson*, and the plaintiff declared in his right name. *Held*, that the writ, as to the plaintiff's name, might be amended by the præcipe. *Beck* v. *Williams*, 5 Blackf. 374.

The making of such an amendment does not entitle the defendant to a continuance. Ibid.

ARTICLE X.

Of witnesses, depositions, and evidence.

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* See Chitty's General Practice, page 444.

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303. Certified judgments, &c. of a justice of the peace of this state.
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306. Copies of deeds, records, bonds, &c. in a public office, how attested, &c., and effect in evidence.
307. Law of another state certified by the secretary of such state.
308. Records, &c. of courts of the several states, how attested, &c.
309. Copy of notice and proof of publication, how certified and filed.
310. Effect of such notice and proof, or copy thereof in evidence.
311. Affidavit from another state, how certified.
312. Common law of any state, how shown.
313. Laws of a foreign country, how shown.

SECT. 243. Every clerk of a court of record may issue writs of subpœna for witnesses, on the application of any party, to any county in this state, in all cases pending before any such court, in which the declaration, plaint, or other cause of action has been filed, and process served, the length of time before the term of the court, to entitle the plaintiff to demand a trial or hearing at such term. * Subpœnas

* See ante page 62, section 12.

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How attested.

SECT. 244. Such subpœna need not be sealed with the seal of the court from which it issues, but shall be attested and signed by the clerk issuing the same; and one subpœna shall include all the witnesses for whom subpœnas are asked at the same time, residing in the same county.

By whom served.

SECT. 245. Such subpœna may be served by the officer to whom the same is directed, or by any other person; but before an attachment against a witness shall issue for an alleged contempt in not obeying a subpœna, served by any other person than the officer to whom the same is directed, or his deputy lawfully appointed, the service thereof as required by law must be verified by affidavit.

Cases in which fees need not be tendered.

SECT. 246. Where a witness is a resident of the county in which the court is held to which he has been subpœnaed, an attachment may issue against him for failing to attend as such witness, although his fees may not have been tendered to him.

Cases in which fees must be tendered.

SECT. 247. Where a witness who is not a resident of the county in which the court is held to which he has been subpœnaed, he may be attached for failing to attend as a witness, unless he demanded his fees at the time he was subpœnaed, and such fees were not then paid to him; and no attachment shall issue in such case, until it is shown to the court by affidavit, or the officer's return, that such witness is justly liable to such attachment.

Costs of more than three witnesses.

SECT. 248. If either party shall cause more than three witnesses to be subpœnaed to prove the same identical fact, such party shall pay the whole costs occasioned by such additional number of witnesses.

Subpœna may be served by copy.

SECT. 249. A subpœna may be served by leaving a copy of the same at the usual place of residence of the witness, unless he shall have left the county, and his return before the term of the court is uncertain.

Proceedings for contempt where witness is subpœnaed by copy.

SECT. 250. Where a witness is subpœnaed by copy as aforesaid, and is attached for contempt in failing to obey such subpœna, the witness shall be purged of such alleged contempt by stating under oath that such copy did not come to his hands or knowledge.

Cases in which negroes, &c. are incompetent.

SECT. 251. No negro, mulatto or Indian, shall be a witness, except in pleas of the state against negroes, mulattoes, or Indians, and in civil causes where negroes, mulattoes, or Indians alone are parties: every person other than a negro having one-fourth part of negro blood or more, or any one of whose grandfathers or grandmothers shall have been a negro, shall be deemed an incompetent witness, within the provisions of this article.

Mode of administering oaths.

SECT. 252. The usual mode of administering oaths now practised in this state, with the ceremony of holding up the hand, shall be observed in all cases in which an oath is to be administered, except as hereinafter provided.

Affirmation of a witness.

SECT. 253. Every person who has conscientious scruples against taking any oath, shall be permitted, instead of swearing,

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solemnly and sincerely to affirm, under the pains and penalties of perjury.

Ceremony of swearing witness.

SECT. 254. Whenever the court shall be satisfied that any person offered as a witness has any peculiar ceremony of swearing, other than by holding up the hand, the court may adopt such mode of swearing such person.

Persons believing in other than the Christian religion, how sworn.

SECT. 255. Every person believing in any other than the Christian religion shall be sworn according to the peculiar ceremonies of his religion, if there be any such ceremonies.

False swearing or affirming in any form, perjury.

SECT. 256. Any person who shall take an oath or affirmation in any of the modes prescribed or allowed by law, and shall therein wilfully and corruptly swear or affirm falsely, shall be liable to all the pains and penalties of perjury.

Belief in a Supreme Being.

SECT. 257. No want of belief in the existence of a Supreme Being who will punish false swearing, shall be considered necessary in any court, or before any justice of the peace, to the competency of any witness; nor shall his belief or disbelief of such, or any other matters of religious faith, be held to affect his competency; but the same shall only go to the credibility of the witness, and for that purpose may be given in evidence to enable the jury or other trier or triers of the facts to judge of such credibility.

Witness shall not be asked as to such belief.

SECT. 258. No witness shall be required to answer any question touching such belief or disbelief, but he may state the same or not, at his option.

Witness may be examined as to his knowledge, &c.

SECT. 259. Nothing contained in the last two preceding sections shall be construed to prevent the examination of any one offered as a witness, who is a person apparently of a weak intellect, or who is an infant, for the purpose of ascertaining his or her mental or moral capacity, or knowledge of the civil and moral obligations of an oath or affirmation.*

General moral character may be shown.

SECT. 260. In all questions affecting the credibility of a witness, his general moral character may be given in evidence.

Person infamous not a competent witness.

SECT. 261. No person, duly convicted by a court of competent jurisdiction, and sentenced according to law upon such conviction, of a crime in this or any other state, declared by the law of this state to be infamous, shall be admitted as a competent witness on the trial of any cause or matter, civil or criminal, pending in any court of justice.

Continuances, substance of testimony of witness must be shown.

SECT. 262. In all applications for the continuance of a cause on account of the absence of a material witness, the party making such application must state in the affidavit presented to the court, in addition to the other necessary matters, the substance or principal facts expected to be proved by such witness, in order that the court may judge of such materiality.

* A deaf and dumb person, who can be communicated with by signs, is a competent witness under our statute, if he has sufficient discretion, and understands that perjury is punishable by law, though he has no conception of the religious obligation of an oath. *Snyder* v. *Nations*, 5 Blackf. 295.

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Of depositions.

Depositions may be taken.

SECT. 263. Depositions of witnesses may be taken in the manner and according to the regulations provided by law, to be used and read in any suit or matter pending in any court.

Before whom taken.

SECT. 264. Any justice of the peace, notary public, master in chancery, mayor or recorder of a city, or the clerk of a court of record, may take depositions, to be used in any cause or matter pending at the time such deposition was taken, he not being of kin to the parties, nor interested in such cause, nor being nor having been counsel or attorney in such cause or matter.

Causes of taking depositions.

SECT. 265. Depositions may be taken by either party for any of the following causes:

Sickness or old age.

1. When the deponent is so aged, infirm, or sick as not to be able to attend the court or other place of trial;

Out of state.

2. When the deponent resides out of or is absent from the state;

About to leave the state.

3. When the deponent is about to go out of the state before the session of the court where the deposition is to be used, and his return in season to attend the trial is doubtful;

Single witness.

4. When the claim or defence of the party, or a material part thereof, depends on a single witness;

Supreme judge, &c.

5. When the deponent is a judge of the supreme court, secretary or treasurer of state, or auditor of public accounts, or clerk of the supreme court, or an attorney at law, in cases where the trial is to be held in a county in which any such officer or attorney does not reside;

President judge

6. When the deponent is president judge of a circuit court and the county in which such trial is to be held is not within his judicial circuit;

Associate judge, &c.

7. When the deponent is an associate judge of any circuit court, probate judge, clerk, or sheriff, and such trial is not to be held in the county in which such officer resides.

When dedimus not necessary.

SECT. 266. When a deposition is to be taken by any officer in this state authorized to take depositions, no commission, or dedimus potestatem, or order of court shall be necessary to the taking of such deposition.

Notice to the adverse party.

SECT. 267. In such case the party wishing to take such deposition, shall give notice to the adverse party to be present at the taking thereof.

What tho notice must contain.

SECT. 268. Such notice shall specify;

1. The cause or matter in which such deposition is to be used;

2. The court or tribunal before which such trial is to be had;

3. The time and place of taking such deposition.

To whom given.

SECT. 269. Such notice may be given to the adverse party, his agent or attorney, and may be served by any sheriff or his deputy, of the proper county, or may be served by any other person and proved by his affidavit; if neither the party nor his agent or attorney, resides in this state, the notice may be filed

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in the clerk's office, or published three weeks successively in a a public newspaper printed in the county in which such suit is pending.

Notice in case of several parties.

SECT. 270. When there are several plaintiffs or defendants, notice of taking such deposition may be given to one or more of them, and such notification shall be deemed sufficient.

Time of giving notice previous to taking deposition.

SECT. 271. No such notice shall be valid unless the adverse party be allowed between the service of the notice and the taking of the deposition, a reasonable time for him to travel from his usual place of abode to the place of taking such deposition, by the ordinary route of travel, exclusive of the day on which such notice was served, the day for taking such deposition, and the intervening Sundays. *

Summons for witness.

SECT. 272. The officer taking the deposition, if requested, shall issue a summons for the witness, if he reside in the county where his deposition is to be taken, to appear at the time and place appointed for taking such deposition.

Witness may be compelled to attend.

SECT. 273. Any such witness shall be compelled to attend and give his deposition, in like manner, and under the same penalties, as he may be summoned and compelled to attend and testify before a justice of the peace.

Same in case of deposition to to be read in another state.

SECT. 274. The provisions of the last two preceding sections shall extend to all officers and commissioners authorized to take depositions in this state, to be read in the courts of other states or countries.

How sworn and examined.

SECT. 275. The deponent shall be first sworn or affirmed by the officer taking his deposition, to testify the truth, the whole truth and nothing but the truth, relating to the cause or matter for which the deposition is to be taken, and he shall then be examined by the party producing him, and then by the adverse party, and by the officer or parties afterwards, if they see cause.

How deposition shall be written and subscribed.

SECT. 276. The deposition shall be written down by the officer, or the deponent, or by some disinterested person, in the presence and under the direction of such officer, and after the same has been carefully read to or by the deponent, it shall then be subscribed by him.

Certificate of officer.

SECT. 277. The officer shall then make out a certificate and annex the same to the deposition, stating therein the following facts:

1. That the deponent was sworn according to law;

* A deposition was taken in *Louisville*, in the state of *Kentucky*, on *Monday* the 23d of *April*, in pursuance of a notice given in *Charlestown*, in the state of *Indiana*, on *Saturday* the 21st, at 5 o'clock in the evening. Without taking into consideration the impropriety of one party's laying another under the necessity of travelling on the Sabbath, we think the notice in this case clearly insufficient. It is not reasonable to presume that a man can at all times hold himself in readiness to answer the calls of his adversary to go at a few hours' notice, to a neighboring state. And even if he had no other preparation to make, it is necessary that the counsel should have time to confer with his client, or the client to consult his counsel, in order to cross-examine the witness with propriety. *Heathorne* v. *Doe*, 1 Blackf. 157.

A notice given in *Daviess* county in this state on the 20th of *October*, to take depositions in *Hamilton* county, *Ohio*, on the 28th of the same month, is insufficient. *Cefret* v. *Burch*, 1 Blackf. 400.

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2. By whom the deposition was written; and if it was written by the deponent, or some disinterested person, he must certify that it was written in the presence and under the direction of such officer;

3. Whether or not the adverse party attended;

4. The time and place of taking the deposition, and the hours between which the same was taken;

And such officer shall sign and attest such certificate, and seal the same: if he have a seal of office, with such seal; and if a justice of the peace, with his seal or an ink scrawl, as in the the case of other certificates.

Envelope and direction of depositions.

SECT. 278. The officer taking such deposition shall seal up the same in a sufficient paper envelope, and shall direct the same to the clerk of the court in which such suit or matter is pending, endorsing on such envelope the names of the parties thereto, and of the witnesses whose depositions are enclosed.

Deposition cannot be read unless cause for taking same continues.

SECT. 279. When a deposition shall be taken in the case of an aged, sick, or infirm witness, or because the witness was about to go out of the state before the session of the court, and his return in time for the trial was doubtful, or in the case of a single witness, on whose testimony the claim or defence, or a material part thereof, of any party depends, such deposition shall not be used unless it shall appear to the satisfaction of the court that the cause for taking it still exists, or that the witness is insane, absent from the state, or dead.

Depositions taken in another state or territory.

SECT. 280. Where the depositions of witnesses are to be taken in another state or territory, the party wishing to take any such deposition shall procure a dedimus potestatem, to be issued by the clerk of the court in which such cause or matter is pending, under the seal of such court, directed to some justice of the peace, mayor, or recorder of a city, or notary public, or clerk of a court of record, authorizing him to take depositions, to be read on the trial of such cause. *

Dedimus.

SECT. 281. The clerk of the court in which any matter or cause is pending, shall issue a dedimus potestatem at the request of any of the parties; nor shall any affidavit or order of the court be necessary to authorize the issuing of such dedimus.

Notice, envelope, and direction.

SECT. 282. Such depositions shall be taken after like notice to the adverse party, as in the case of depositions taken in this state, and the dedimus shall be returned with such depositions, the whole to be enclosed by the person taking the same in a sufficient paper envelope, and sealed up and endorsed, as required in the case of depositions taken in this state, and directed to the clerk of the court in which such cause or matter is pending.

How certified when taken out of the state.

SECT. 283. If the dedimus contain the name of the officer before whom any such deposition was to be taken, his attestation, officially certifying the same, shall be a sufficient authentication; but if such dedimus do not specify the name of the

* A dedimus to take depositions, directed to any justice of the peace (not naming him) in a specified county in another state, is good. *Earl* v. *Hurd*, 5 Blackf. 248. See post section 283 of this chapter.

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officer, and he have no official seal, his certificate shall be authenticated by the certificate and seal of the clerk or prothonotary of any court of record of the county in which such officer exercises the duties of his office.* ARTICLE 10.

SECT. 284. When depositions are to be taken in a foreign country, they shall be taken pursuant to an order of the court under a commission, with such reasonable notice of the time and place of taking the same as such court shall require. Depositions taken in a foreign country.

SECT. 285. Any depositions taken according to the provisions of the last preceding section, shall be certified and returned to the court granting such commission, by the commissioner or commissioners taking the same, in such manner as the court shall direct, sealed up in a sufficient envelope, and endorsed as in the case of other depositions. How certified and returned.

SECT. 286. Every deposition taken in accordance with the provisions of this article, and intended to be read in evidence, must be filed in the proper court, at least one day before the time at which such cause in which such deposition is to be used stands on the docket for trial; or if filed afterwards and claimed to be used on the trial, the adverse party shall be entitled to a continuance, at the costs of the party filing such deposition. Depositions, how long filed before trial.

SECT. 287. Depositions may be published by the order of the court, at any time after the filing thereof, on the motion of either party.† Publication.

SECT. 288. Objections to the competency of a deponent, or to the propriety of any questions proposed to him, or answers given by him, may be made at the time of taking his deposition, in the same manner as if he were a witness before the court on the trial of such cause; and if so made, may, at the request of either party, be entered in such deposition; or any such objections may be made to the deposition when published in court, whether made at the taking of the deposition or not.‡ Objections to competency of deponent, and to questions, &c., when to be made.

*See *Earl* v. *Hurd*, 5 Blackf. 248.

† The circumstance that a deposition, which has been three days on file, had not been opened before the jury were sworn, is not of itself a sufficient objection to its being afterwards opened and read in evidence. *Harter* v. *Seaman*, 3 Blackf. 27.

If a deposition be improperly suppressed, the party waives the error by introducing another deposition of the same witness, testifying to the same facts. *Saunders* v. *Johnson*, 6 Blackf. 50.

‡ If the attesting witnesses to a bond reside in another state, the bond will be received in evidence, upon proof of their hand writing. *Jones* v. *Cooprider*, 1 Blackf. 47.

One of two subscribing witnesses to a bond being called to prove its execution, denied his signature. *Held*, that the other, if he could be procured, should be examined, but if he could not be found, secondary evidence might be resorted to. *Booker* v. *Bowles*, 2 Blackf 90.

If a subscribing witness deny his signature, the case stands in the same situation as if his name were not on the instrument. Ibid.

A deed with subscribing witnesses is not admissible in evidence on proof of the grantor's hand-writing, unless the absence of the witnesses is accounted for, and due diligence have been used without effect, to procure proof of their hand-writing. *Bowser, et al*, v. *Warren*, 4 Blackf. 522.

Although a witness has been sworn in chief, examined and cross-examined, yet if it be afterwards discovered, at any time during the trial, that he is interested, his testimony should be struck out. *Stout* v. *Wood*, 1 Blackf. 71.

A witness on his cros-sexamination declared he was not interested. *Held*, that his interest might be afterwards proved by other testimony. Ibid.

If a witness be objected to as interested, and his interest be proved by other wit-

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What objections must be made before the trial.

SECT. 289. All objections to the validity of any deposition, or its admissibility in evidence, shall be made before entering on the trial, and not afterward.

After commencement of the trial.

SECT. 290. But any deposition after the commencement of the trial may be suppressed, if any matter which is not disclosed in such deposition appears, which is sufficient to require and authorize such suppression.

In case of non-suit, &c., depositions may be used in second suit, &c.

SECT. 291. When a plaintiff shall become non-suit, or discontinue his suit, and shall commence another action for the same cause, all depositions lawfully taken for the first suit may be used in such other suit, and also in a suit founded on the same cause of action between either of such parties and the representatives of the other party; but it must appear that

nesses, the party calling the witnesses has no right to examine him on his voire dire; that right belonging alone to the party who makes the objection. *Wright* v. *Matthews*, 2 Blackf. 187.

No confession of interest made by a witness after a party is entitled to his testimony can render him incompetent. *Sims* v. *Givan*, 2 Blackf. 461.

To exclude a witness on the ground of interest, he must appear to be interested in favor of the party who calls him. Ibid.

The surety for costs in a suit before a justice of the peace is not a competent witness for the plaintiff, on the trial of the cause on appeal. *Craven* v. *Uptyke*, 3 Blackf. 272.

The maker of a promissory note is a competent witness for the plaintiff, in an action by the assignee against the assignor, involving the validity of the consideration of the note. *Fosdick* v. *Starbuck*, 4 Blackf. 417.

If the payee of a note assign it, and the assignee sue the maker, the plaintiff, having released to the payee, may examine him as a witness, to prove the execution of the note. *Mathany* v. *Westfall*, 4 Blackf. 491.

An agent is generally admitted as a witness, from necessity, to prove his delivery of goods, or payment of money, for his principal. *Doe* v. *Himelick*, 4 Blackf. 494.

An administrator who is defendant in an action, is not a competent witness against the plaintiff. *Sinks* v. *English*, 3 Blackf. 138.

In an action by a road commissioner on a bond, his predecessor to whom the bond was given not being interested, is a competent witness for the plaintiff. *Cox* v. *Way*, 3 Blackf. 143.

In a suit against husband and wife for a debt due by the wife, dum sola, the plaintiff cannot prove admissions made by the wife, after her marriage, respecting the debt. *Brown* v. *Lasselle*, 6 Blackf. 147.

The admissions of a party may be given in evidence against him. *Carter* v. *Buckner*, 3 Blackf. 314.

The admissions made by a party, examined under oath on a trial before a justice, cannot be proved in the circuit court, on appeal,—the party being in court on the trial of the appeal, and not there examined. Ibid.

It is the general rule that the best evidence must be given of which the nature of the case is capable. *Jackson* v. *Cullum*, 2 Blackf. 228.

If any instrument of writing, or even the record of a judgment, be lost or destroyed, the contents may be proved by parol evidence. Ibid.

The rule of law, that the best evidence which the nature of the case admits of must be produced, applies as well to secondary as to primary evidence. *Coman* v. *The State*, 4 Blackf. 241.

The oath of one of several plaintiffs to the loss of an instrument of writing is sufficient to let in secondary evidence of its contents. *Harris* v. *Doe*, 4 Blackf. 369.

Neither hearsay nor irrelevant testimony is admissible. *Wilson* v. *Harding*, 2 Blackf. 241.

A party is not permitted to prove what one of his witnesses swore to on a former trial of the cause, until he has proved that the witness is dead. *Hobson* v. *Doe*, 2 Blackf. 308.

Evidence of what a deceased witness swore to on a former trial, is only admissible where that trial was between the same parties that are concerned in the subsequent suit. *Earl* v. *Hurd*, 5 Blackf. 248.

The statement of a witness made out of court, contrary to what he swears at the trial, concerning facts relevant to the issue, may be proved to impeach his credit. Secus, if they be irrelevant facts. *Shields* v. *Cunningham*, 1 Blackf. 86.

If a witness be impeached by proof of his having previously made statements inconsistent with his testimony, he may be corroborated by evidence of other statements made by him in accordance with his testimony. Aliter, if he has not been thus impeached. *Coffin* v. *Anderson*, 4 Blackf. 395.

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such depositions have been duly filed in the court where the previous cause was pending, and have remained on file from the time such suit was discontinued, or the plaintiff non-suited, until the time at which it is proposed to use them in such other suit.

Of perpetuating testimony.

Affidavit and notice.

SECT. 292. Whenever any person shall make affidavit before any circuit court, or judge thereof, or master in chancery, that such person expects to be made a party in any suit thereafter to be commenced, and that the testimony of a witness to be named in such affidavit is material and necessary to the prosecution or defence of such suit, the court or officer before whom such affidavit is made, shall order reasonable notice to be given to the party expected to be adverse to such applicant, or to his attorney, that on the day and at the place in such notice to be expressed, such witness will be examined de bene esse before such judge or master in chancery as shall be specified in said order.

How depositions shall be taken and certified, &c.

SECT. 293. Upon proof that such notice has been given either by personal service or advertisement, at least three weeks successively in some public newspaper printed and published in the proper county, or one most convenient thereto, (when the person to be notified is not an inhabitant of this state,) made to the officer authorized to take such testimony, such officer on the day appointed in such order, or on such other day as such officer shall then appoint, shall proceed to take the testimony of such witness, and shall insert in the deposition any answer or declaration of such witness which may be required by either party; and such deposition being carefully read to and subscribed by said witness, the officer certifying the same shall certify it to have been taken pursuant to this article.

When and where filed.

SECT. 294. Every affidavit and order, and every deposition so taken and certified, shall, within thirty days after such deposition is taken, be filed in the office of the clerk of the circuit court of the county where the subject matter of such expected suit may be situate.

In what case such deposition may be used.

SECT. 295. Upon proof of the death, insanity, or absence from the state of such witness, or his or her inability by reason of age or infirmity to attend, such deposition or a certified copy thereof by the clerk of the court where the same is filed, shall be admitted as evidence in any court in this state, in any cause between the parties named in such affidavit, or in any cause between persons claiming under either of said parties, and shall have like effect as if the said witness had been personally present, and given oral testimony therein, saving the right of exception in all cases on account of the incompetency of such witness, or of any part of the testimony contained in such deposition.

Its effect in evidence.

Right of exception.

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Affidavit to take such deposition of witness out of the state.

SECT. 296. When any person shall make affidavit as aforesaid, that he expects to be a party to a suit, and that the testimony of a witness not resident within this state is material and necessary to the prosecution or defence thereof, and shall file the same with any clerk of the circuit court of this state, the said clerk shall make out a commission or authority directed to any officer authorized by law to take depositions in the state or territory where such witness resides, upon reasonable notice as aforesaid, and pursuant to the directions of the preceding sections of this division of this article.

How certified, &c

SECT. 297. Such deposition, so taken and certified as aforesaid, and authenticated by the certificate of the clerk and the seal of the court of the county or district in which the officer taking such deposition resides, to be returned with the commission aforesaid, and proof by affidavit of the service of notice of taking the same to the court issuing such commission, shall be of like force and effect as in the case of depositions taken in this state as aforesaid.

Of documentary and other written evidence.

Printed statutes of this state, &c.

SECT. 298. The printed statute books of this state, and of the late territory Northwest of the River Ohio, and the territories of Indiana and Illinois, purporting to be printed under the authority of said state or territories, shall be evidence in all courts and places of the private acts therein contained.*

Of other states, &c.

SECT. 299. The printed statute books of the several states and territories of the United States, purporting to be printed under the authority of those states and territories, shall be prima facie evidence in all courts or places, of the legislative acts, public or private, of those states or territories respectively.†

Copies of printed statutes of states, &c. in state library, &c.

SECT. 300. Copies taken by the secretary of state of any statute contained in any of the printed statute books of the several states and territories of the United States, which have been or may be hereafter transmitted under the authority of any such state or territory to this state, and which shall be deposited in the office of the secretary of state of this state, or in the state library, shall be admissible in any court or place, if said copies have attached thereto the certificate of such secretary, under the seal of the state, certifying such copy to be complete and correct, that the statute book from which such copy is taken, is deposited in the office of said secretary, or in such state library, and is by him believed to have been received under the authority of the state or territory purporting to have enacted the same.

* From the time a statute is published in print, by authority, at any place within the state, it takes effect in every part of it, unless the act itself otherwise direct. *Tredway* v. *Gapin*, 1 Blackf. 299.

† The statutes of other states are not noticed by our courts unless they be pleaded and proved. *Elliott* v. *Ray*, 2 Blackf. 31. *Irving* v. *McLean*, 4 Blackf. 52.

The exemplification of a statute under the seal of state, is admissible evidence under the act of congress of 1790, without the attestation of any public officer. *Henthorn* v. *Doe*, 1 Blackf. 157.

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Certified judgments, &c. of justices of the peace of another state, &c.

SECT. 301. Copies of the proceedings and judgments of any justice or justices of the peace of any state or territory of the United States, certified by the justice or justices under his or their hands and seals, before whom such proceedings were had or judgments rendered, that the same are true and complete copies of such proceedings or judgments, with the certificate of the clerk or prothonotary of any court of record of the county or district where said justice or justices shall hold his or their office or offices, certifying under the seal of said court that said justice or justices was or were at the time when such proceedings were had or judgment rendered, and when such copy was taken, duly commissioned and qualified to act as such, shall be admissible as evidence in any of the courts of this state.

Copies of such judgments, &c. certified by a successor.

SECT. 302. Where the proceedings or judgments of any justice or justices of the peace, as in the preceding section mentioned, shall be legally deposited in the hands of the successor or successors of the officer or officers before whom such proceedings or judgments were had, copies thereof, certified by the justice or justices having such legal custody of the same in the manner provided in the foregoing section, with the certificate of the proper clerk or prothonotary as aforesaid, shall be received as evidence in the same manner as if such proceedings or judgments had been certified by the officer or officers before whom they were originally had.

Certified judgments, &c., of a justice of this state.

SECT. 303. Copies of the proceedings and judgments of any justice of the peace of this state, certified under his hand and seal, or under the hand and seal of the justice who may have the legal custody thereof, as true and complete copies of such proceedings or judgments, shall be received as evidence in the several courts of this state.*

Certificate, &c. of notaries public.

SECT. 304. Certificates or instruments, either printed or written, purporting to be the official act of a notary public of this state, or of any other state or territory of the United States, and purporting to be under the seal and signature of such notary public, shall be received as prima facie evidence

* A justice of the peace with whom the docket of a former justice is legally deposited, may give certified copies from such docket; but the certificate must show that the justice making it has the legal custody of the docket. *Anderson* v. *Miller*, 4 Blackf. 417.

A paper purporting to be an affidavit made before a justice of the peace in another county was offered in evidence. *Held*, that there must be proof of its authenticity in order to authorize its admission; but that it might be proved by parol evidence. *Hagaman* v. *Stafford*, 2 Blackf. 351.

Copies of process issued by a justice of the peace and regularly returned, are, when properly authenticated, legal evidence without accounting for the absence of the original. *Steele* v. *Pope*, 6 Blackf. 176.

The certificate of a justice of the peace, that a state warrant issued by another justice, is on file in the office of the justice giving the certificate, is prima facie evidence that it is legally there; and his certificate that a copy of the warrant is a true copy is a sufficient authentication. Ibid.

In a suit against a justice for not filing in time the papers in an appeal, the best evidence of the justice's judgment is his record, or a certified copy of it—not a copy certified by the clerk, of the transcript filed in the circuit court. *Mills* v. *Barnes*, 4 Blackf. 438.

Parol evidence that a person has acted as a justice of the peace is admissible to prove him to be such officer. *Brown* v. *Connelly*, 5 Blackf. 390.

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of the official character of such instruments and of the truth of the facts therein set forth.

Certificate by secretary of state of time when laws are filed in any county.

SECT. 305. The certificate of the secretary of state, under the seal of state, stating the time when any act or acts of the general assembly were deposited in his office, or deposited in the office of the clerk of any circuit court in this state, as shall appear from the certificate or receipt of any such clerk, shall be admissible in all the courts of this state as evidence of the facts stated in such secretary's certificate.

Copies of deeds records, bonds &c., how attested, &c., and effect in evidence.

SECT. 306. Exemplifications or copies of records of deeds or other instruments, or of office books or parts thereof, and official bonds which are or may be kept in any public office in this state not appertaining to any court, shall be proved or admitted as legal evidence in any court or office in this state, by the attestation of the keeper of the said records, or books, or official bonds, that the same is a true and complete copy of the record, bond, instrument, or book, or part thereof in his custody, and the seal of office of said keeper thereto annexed, if there be a seal, and if there be no official seal, then such keeper may affix his ink scrawl to the attestation, to which last mentioned attestation shall be attached the certificate of the clerk, and the seal of the circuit court of the proper county where such keeper resides, that said attestation is made by the proper officer.*

* *Act of congress, March 27th*, 1804.

SECT. 1. From and after the passage of this act, all records and exemplifications of office books, which are or may be kept in any public office of any state, not appertaining to a court, shall be proved or admitted in any other court or office in any other state by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept; or of the governor, the secretary of state, the chancellor or the keeper of the great seal of the state, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the governor, the secretary of state, the chancellor or keeper of the great seal, it shall be under the great seal of the state in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the state from whence the same are or shall be taken.

SECT. 2. All the provisions of this act, and the act to which this is a supplement, shall apply as well to the public acts, records, office books, judicial proceedings, courts, and offices of the respective territories of the United States, and countries subject to the jurisdiction of the United States as to the public acts, records, office books, judicial proceedings, courts, and offices of the several states.—Gordon's Digest, arts. 941, 942.

To make the certified copy of a record of a public office, not appertaining to a court, admissible evidence in another state, under the act of congress of 1804, the certificate of the proper officer must state the attestation of the keeper of the records or books to be *in due form*. *Henthorn* v. *Doe*, 1 Blackf. 157.

The seal of the general land office, and the signature of the commissioner thereof, to copies of papers required by law to be deposited in that office, prima facie prove themselves. *Harris* v. *Doe*, 4 Blackf. 369.

A patent for *United States'* land which appears to be signed by the president, countersigned by the commissioner of the general land office, and verified by the seal of that office, is admissible as evidence without proof of its execution. *Bowser* v. *Warren*, 4 Blackf. 522.

A copy of the record of a patent for *United States'* land, from the general land office under the signature of the commissioner and the seal of the office, is admissible in evidence if the original patent be lost or destroyed. *Smith* v. *Mosier*, 5 Blackf. 51.

Sworn copies of affidavits on file in the office of a register of the land office, re-

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ARTICLE 10.

Law of another state certified by the secretary of such state.

SECT. 307. Every act of the legislature of any one of the states or territories of the United States, certified by the secretary, and having the seal of said state or territory affixed thereto, shall be deemed authentic, and receive full faith and credit when offered in evidence in any court of justice within this state.*

Records, &c., of courts of the several states, how attested, &c.

SECT. 308. The records and judicial proceedings of the several courts of record, of or within the United States or the territories thereof, shall be admitted in the courts of justice within this state as evidence, by attestation or certificate of the clerk or prothonotary, and the seal of the court annexed, together with the certificate of the chief justice or one or more of the judges, or the presiding magistrate of any such court, that the person who signed such attestation or certificate was, at the time of subscribing it, the clerk or prothonotary of such court ,and that such attestation is in due form of law; and such records and judicial proceedings, authenticated as aforesaid, shall have full faith and credit given to them in any court within this state, as, by law or usage, they have in the courts whence they are or shall be taken. †

specting a pre-emption right, are admissible as evidence in cases in which the originals, could they be procured, would be evidence. Ibid.

* The exemplification of a statute under the seal of state is admissible evidence, under the act of congress of 1790, without the attestation of any public officer. *Henthorn* v. *Doe*, 1 Blackf. 157.

†*Act of congress, May 26th*, 1790.

The acts of the legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto: the records and judicial proceedings of the courts of any state shall be proved or admitted in any other court within the United States by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken.—Gordon's Digest, article 940.

See Constitution of the United States, art. 4, sec. 1, ante p. 11.

A transcript of the record of a judgment is not admissible as evidence unless it have a placita and be legally authenticated. *Doe* v. *Smith*, 4 Blackf. 228.

If the clerk's certificate, attached to the copy of letters testamentary from a probate court of another state, have not the seal of the court or officer granting the letters, the copy is not admissible as evidence. *Allen* v. *Thaxter*, 1 Blackf. 399.

The transcript of a record of the district court of the United States for this state under the seal of the court, and certified by the clerk to be a complete copy of the record, is admissible as evidence in the courts of this state. *Adams* v. *Lisher*, 3 Blackf. 241.

The constitution of the United States, requiring full faith and credit to be given in each state to the judicial proceedings of every other state, does not apply to a judgment which has been rendered without the defendant's having had legal notice of the suit. *Cone* v. *Cotton*, 2 Blackf. 82.

The judgment of a court of record of competent jurisdiction in one state, fairly obtained, when the defendant had personal notice of the suit, is conclusive between the parties in an action on it in any other state; the circumstance that the judgment is against the defendant as special bail makes no difference. *Holt* v. *Alloway*, 2 Blackf. 108.

To an action on the judgment of a court in another state, the defendant may plead that the judgment was obtained by fraud, or that the court had no jurisdiction of the person or of the subject matter. Ibid.

A judgment obtained conformably to the laws of the state against a person resident therein, without personal notice of the suit, is not conclusive against him in an action on it in another state; nor is such judgment absolutely void as the judgment of a court having no jurisdiction. The judgment, in such case, stands on the same footing with

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PART III.

Copy of notice and proof of publication how certified and filed.

SECT. 309. When notice is, in any suit, proceeding, or sale under execution, or other matter, required by the provisions of law, to be given by publication in any newspaper, an affidavit of the printer, or any person in his employ, as a clerk or printer, of a competent age, annexed to a copy of such notice taken from the paper in which it was published, may be filed in the clerk's office by the person whose duty it was to cause such publication to be made; such affidavit specifying the county, the times when, and the paper in which, such notice was published.

Effect of such notice and proof or copy thereof in evidence.

SECT. 310. The original affidavit and copy of such notice, filed pursuant to the provisions of the last section, and copies thereof, duly certified by the officer in whose custody the same may be, shall be presumptive evidence in all cases and before every court, of the facts contained in such affidavit.

Affidavit from another state, how certified.

SECT. 311. When any affidavit is taken in another state and certified by the officer or justice of the peace taking the same, under his hand and seal of office, if he have any such seal, and attested by the clerk of the circuit or district court or court of common pleas of the county where such officer exercises the duties of his office, under the hand of such clerk and the seal of his court, such clerk also certifying that such officer or justice of the peace is, by the laws of said state, duly empowered to administer oaths and affirmations, and take affidavits, every such affidavit shall be deemed sufficiently authenticated, and may be received and used in any of the courts of this state.

Common law of any state, how shown.

SECT. 312. The unwritten or common law of any other of the United States, or of the territories thereof, may be proved as facts by parol evidence, and the books of reports of cases adjudged in their courts may also be admitted in evidence of such law.

Laws of a foreign country how shown.

SECT. 313. The existence and tenor or effect of the laws of any foreign country may be proved as facts by parol evidence; but if it shall appear that the law in question is contained in a written statute or code, the court may, in their discretion, reject any evidence of such law which is not accompanied by a copy thereof.

a foreign judgment; and if it be against special bail, he may, in an action on it in another state, plead that no ca. sa. had issued against his principal. Ibid.

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ARTICLE XI.

Of the trial and its incidents.

SECTION
314. When cause may be tried.
315. Judgment on demurrer, &c., court may calculate debt or damages, or award inquiry, &c.
316. Court may try cause by agreement of parties
317. Peremptory challenges.
318. Interpreters.
319. When plaintiff may suffer a non-suit.
320. If both parties absent, court may non-suit or continue.
321. Cause reversed in supreme court and sent back, when tried.
322. General verdict on several counts, judgment not arrested, &c., if any count good. Faulty count may be disregarded.
323. If verdict in detinue omit price, court may award a writ of enquiry. Verdict for part of several articles in such case.

SECTION
324. But two new trials granted.
325. If trial pending at the end of the term, court may be continued until the cause is tried.
326. Instructions of judge shall be in writing if required.
327. Exceptions shall be taken when decision made.
328. Shall be in writing, but time shall be allowed to settle the form, &c.
329. If fairly stated, bill shall be signed.
330. Mandamus to compel signing of exceptions.
331. Shall be filed and annexed to the record.
332. Court shall determine what papers the jury shall take, &c.

SECT. 314. When the declaration has been filed and process served ten days before the first day of the term of the court, the cause shall stand for trial at such term. When cause may be tried.

SECT. 315. In all cases of judgment on demurrer, by nihil dicit, non sum informatus, or default, when the matter alleged as the foundation of the suit or charge depends upon calculation, or can be reduced to a certainty by calculation, the court may give judgment for the debt or damages to which the party is entitled; or either party may have a writ of inquiry for the assessment of such debt or damages.* Judgment on demurrer, &c., court may calculate debt or damages, or award inquiry, &c.

SECT. 316. When the parties in any suit shall by agreement submit any matter to the determination of the court, such court may hear and determine the same, and give judgment therein without the intervention of a jury.† Court may try cause by agreement of parties.

SECT. 317. In all actions tried in any court of record, each party shall have the right of peremptory challenge to three jurors.‡ Peremptory challenges.

* If the sum to which the plaintiff is entitled depend on the amount due on a judgment, the court can assess the damages, after judgment for the plaintiff on demurrer, without a jury; and so whenever there are records or other undisputed documents to determine the amount due. *Harrington* v. *Witherow*, 2 Blackf. 37. See *Bradfield* v *McCormick*, 3 Blackf. 161.

† If the court try a cause, by consent, without a jury, the judgment takes the place of a verdict, and can be set aside only on the same preponderance of evidence that would invalidate a verdict. *Priest* v. *Martin*, 4 Blackf. 311.

‡ A juror may be asked on the voire dire, in a civil as well as a criminal case, whether he has formed or expressed an opinion on the merits of the cause. *Maize* v. *Sewell*, 4 Blackf. 447.

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PART III.

Interpreters.

SECT. 318. Interpreters may be sworn to interpret truly whenever necessary.

When plaintiff may suffer non-suit.

SECT. 319. The plaintiff may suffer a non-suit at any time before the verdict of the jury shall have been received by the court.*

If both parties absent, court may non-suit or continue.

SECT. 320. If on the calling of the cause for trial, the plaintiff fail to prosecute, and the defendant fail to appear, the court may enter a non-suit against the plaintiff or continue the cause.

Cause reversed in supreme court and sent back, when tried.

SECT. 321. Whenever any cause is reversed in the supreme court, in whole or in part, on appeal or writ of error, and sent back for such further proceedings as may require a trial by jury, if the decision and opinion of the supreme court in such cause shall have been deposited in the office of the clerk of the inferior court sixty days or more before the first day of any term of such court, such cause shall stand for trial at such term; otherwise it shall be continued until the next term of the court.

General verdict on several counts, judgment not arrested, &c., if any count good.

Faulty count may be disregarded.

SECT. 322. When a general verdict is given on the trial of any civil action for the plaintiff, in which some of the counts in the declaration are bad, and any one of them is good, judgment on the verdict for that reason shall not be delayed or arrested, nor subject to reversal on appeal or writ of error; and on the trial of any such cause, the court, at the request of the defendant, may instruct the jury to disregard any such faulty count.†

If verdict in detinue omit price, court may award a writ of inquiry.

Verdict for part in such case.

SECT. 323. If the verdict in detinue omit the price or value, the court may at any time award a writ of inquiry to ascertain the same; and if on an issue concerning several things in one count in detinue, no verdict be found for part of them, the verdict shall be good, but the plaintiff shall be barred of his title to the things omitted.‡

But two new trials.

Costs.

SECT. 324. Not more than two new trials shall be granted to the same party in the same cause; and the court in granting new trials may allow the same on the payment of costs, or on the costs abiding the event of the suit, as the justice and equity of the case may require, taking into consideration the causes which may make such new trial necessary. §

* The court is authorized by statute, in certain cases, to give judgment as in case of a non-suit; but a jury cannot, in any case, find a verdict to that effect. *The State* v. *Beem*, 3 Blackf. 222.

See sections 197 and 320, of this Chapter.

† Declaration in slander containing two counts, judgment by default, entire damages assessed by the jury, and final judgment accordingly. Errors assigned: 1 One of the counts is bad. 2. There is no sufficient venue in the declaration. *Held*, that the objections were made too late. *Wickham* v. *Baker*, 4 Blackf. 517.

‡ A verdict in detinue was as follows: "We the jury find the property named in the declaration to be in the plaintiff, and find the value thereof to be sixty dollars." *Held*, that the judgment should be arrested, the verdict not showing an unlawful detainer of the property. *Crouch* v. *Martin*, 3 Blackf. 256.

§ He who desires a new trial, must receive it as to the whole case. *Morris* v. *State*, 1 Blackf. 37.

On the trial of a cause, material evidence offered by the defendant was improperly rejected, and there was a verdict against him. The court, in consequence of that mistake, granted a new trial to the defendant, provided he should consent to go to trial on a certain day of the term, or show a good cause of continuance. The defendant refused to comply with the terms, and a judgment was accordingly rendered against him

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ARTICLE 11.

If trial pending at end of term, court may be holden until the cause is tried.

SECT. 325. If at the expiration of the time fixed by law for the continuance of the term of any court, the trial of a cause shall be progressing, said court may continue its sitting beyond such time, and require the attendance of the jury and witnesses, and do, transact, and enforce all other matters which shall be necessary for the determination of such cause; and in such case, the term of said court shall not be deemed to be ended, until the cause shall have been fully disposed of by said court.

Instructions of judge shall be in writing if required.

SECT. 326. Whenever, on the trial of any cause, either party shall object to the court, or any judge thereof, giving any charge or instruction to the jury, or any modification or explanation of any charge or instruction, unless the same be in writing, such court or judge shall reduce the matter objected to to writing before giving the same to the jury.

Exceptions shall be taken when decision is made.

SECT. 327. In all cases where exceptions are allowed by law during the pendency of any cause or matter, the party complaining of any decision shall take such exception at the time the decision complained of is made.

Shall be in writing, but time shall be allowed to settle the form, &c.

SECT. 328. Such exception shall be in writing, but the court shall allow such time as may be deemed reasonable to settle and reduce the same to form.

If fairly stated, bill shall be signed.

SECT. 329. If the truth of the matter be fairly stated in such exception, it shall be the duty of the person or persons composing the court, or the major part of those who were present when the decision excepted to was made, to sign and seal such bill of exceptions.

Mandamus to compel signing the exceptions.

SECT. 330. If any court refuse to sign such bill of exceptions, they may be compelled so to do by the court to which an

on the verdict. *Held*, that as the verdict was illegal, the judgment rendered upon it was necessarily erroneous. *Held*, also, that under the circumstances of the case, the verdict should have been set aside unconditionally, a new trial granted, and the cause permitted to progress as if no previous trial had taken place. *Heath* v. *Shelby*, 1 Blackf. 228.

A defendant, after a verdict and judgment against him in assumpsit, filed a bill in chancery for a new trial, on account of newly discovered evidence; averring that due diligence had been used without effect, to procure the evidence previously to the trial. *Held*, on demurrer, that the bill would lie. *Deputy* v. *Tobias*, 1 Blackf. 311. And see *Doubleday* v. *Makepeace*, 4 Blackf. 9.

Motions for new trials, on account of newly discovered evidence, are viewed with great caution, and have been uniformly overruled where, with due diligence, the party might previously have had the benefit of the evidence. *Coe* v. *Givan*, 1 Blackf. 367.

On a motion for a new trial, on the ground that certain facts can be proved by a witness who was absent, the affidavit of the witness himself should be produced, or its absence accounted for. *Cummins* v. *Walden*, 4 Blackf. 307. See *Mann* v. *Clifton*, 3 Blackf. 304.

A new trial will not be granted to a plaintiff, on the affidavit of a witness that he had forgotten, until after the trial, to mention a material fact, invalidating one of the pleas. *Duignan* v. *Wyatt*, 3 Blackf. 385.

It is a general rule that a plaintiff, after a verdict against him, cannot claim a new trial on account of his having been surprised by the defendant's evidence. *Cummins* v. *Walden*, 4 Blackf. 307.

A new trial should not be granted in an action on tort, on the ground that the damages are excessive, unless they appear at first blush to be outrageous and excessive. *Picquet* v. *M'Kay*, 2 Blackf. 465. See also, *Saunders* v. *Johnson*, 6 Blackf. 51.

A verdict in accordance with the weight of the testimony and with justice, ought not to be set aside on account of an erroneous instruction given by the court to the jury. *Harris* v. *Doe*, 4 Blackf. 369.

The party against whom erroneous instructions to the jury are given, is entitled to a new trial, without the payment of costs. *Fisher* v. *Bridges*, 4 Blackf. 518.

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appeal may be taken, or in which a writ of error may be brought upon the judgment rendered in such case.

Shall be filed and annexed to the record.

SECT. 331. The bill of exceptions shall be filed with the clerk of the court in which the cause is pending; and a copy thereof shall be certified and returned with the record, to the court into which such judgment may be brought by appeal or writ of error.

Court determine what papers the jury shall take, &c.

SECT. 332. The court, in all trials shall have a right to determine what papers shall be taken from the bar by the jury to their room, any former usage or law to the contrary notwithstanding.

ARTICLE XII.

Of judgment and costs, and putting in bail for the stay of execution; and of the judgment docket.

SECTION

333. Motion to set aside judgment, when made.
334. Judgment on verdict at a term subsequent to being found, shall include interest up to judgment.
335. Judgment shall be with costs.
336. Costs in actions ex delicto.
337. Costs in ejectment or in suits ex rel., or for the use of another.
338. Several actions on demands which might be joined, costs to be allowed in only one.
339. Defendant, &c. may offer to confess judgment in actions on contract, &c., and appeals; and if plaintiff proceed, he shall pay subsequent costs unless he recover more than was offered to be confessed.
340. Of the order to pay costs. Attachment.
341. Bill of fees in such case.
342. If fees paid attachment shall not be executed.
343. Party may require taxation of costs.
344. If paid, shall be noted by the officer in his return.
345. If party refuse payment, he shall be held in custody.
346. Length of stay of execution on judgments.
347. Recognizance of replevin bail.
348. Bail before the clerk.
349. Form of recognizance of replevin bail.

SECTION

350. If writ issue before bail entered, the clerk shall so indorse on the writ.
351. Replevin bail may be entered with the sheriff, &c.
352. Shall be indorsed on the execution. Form of recognizance before the sheriff.
353. Shall be returned with the writ.
354. Shall be copied by the clerk into the execution docket. Shall be deemed a record.
355. No execution to issue until expiration of stay, &c.
356. Force and effect of recognizance of replevin bail.
357. Execution thereon, and how executed.
358. Sale of property on such execution.
359. Cases in which no stay shall be allowed.
360. Same.
361. Execution under the last two sections, how endorsed.
362. No stay in case of principal if surety object.
363. Replevin bail may cause execution to issue before stay expires.
364. Other bail may be taken on such execution.
365. Force and effect of such new recognizance.
366. Recognizance of replevin bail shall not discharge original judgment.

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367. Judgment docket.
368. Recognizance of replevin bail shall be docketed.
369. Such docket shall be open to examination.
370. Penalty for omitting to docket judgment, &c.

ARTICLE 12.

Motion to set aside judgment.

SECT. 333. No judgment in any court of record shall be set aside on motion, unless such motion be made during the term at which such judgment was rendered.

Judgment on verdict at a term subsequent to being found shall include interest up to judgment.

SECT. 334. When a verdict is rendered at any term of the court, in an action of debt or assumpsit, on any contract for the payment of money, and judgment is not rendered on such verdict until a succeeding term, the court shall estimate the interest which shall have accrued on the sum, for which such verdict was given, and include such interest in the damages of the party in whose favor judgment may be rendered.

Judgment shall be with costs.

SECT. 335. In all civil actions the party recovering or obtaining any judgment shall also recover his costs against the other party, except those cases in which a different provision is made by law.

Costs in action ex delicto.

SECT. 336. If the plaintiff in any action ex delicto, except the action of replevin, actions on the case for slander or libel, trespass for false imprisonment, and all actions in which the title to real estate is concerned, do not recover five dollars in damages, he shall recover no more costs than damages.

Costs in ejectment, or in suits ex rel., or for the use of another, &c.

SECT. 337. If judgment be rendered for the defendant in an action of ejectment, or in an action in the name of the state on the relation of or for the use of any person or corporation, or in an action in favor of a nominal plaintiff, for the use and benefit of any person or corporation, any such fact appearing on the record, such defendant may take judgment, if he desire it, for costs against the lessor of the plaintiff, or relator, or person for whose use or benefit such action may have been brought.

Several actions on demands which might be joined, costs in only one.

SECT. 338. When a plaintiff shall at the same court bring several actions against the same defendant, upon demands which might have been joined in the same action, he shall recover costs in one action only, unless it shall appear to the court that the actions affect different rights or interests, and that for such or other sufficient reasons such actions ought not to have been joined.

Defendant may offer to confess judgment in actions on contract and appeals; and if the plaintiff proceed, he shall pay costs unless he recover more than was offered to be confessed.

SECT. 339. In any action founded on any judgment, decree, or express or implied contract, and in actions appealed from the decision of a justice of the peace, the defendant may offer and consent in writing, that judgment may be entered against him by confession for a specified sum; and such offer and consent in writing shall be entered on the record, and the time designated thereon when such offer was made; and if the plaintiff refuse to take final judgment for such sum, and shall proceed to trial, and recover no greater sum for his debt and damages, or damages alone, up to the time when such offer was made, than was specified in such offer, the defendant shall recover the costs from the plaintiff, occasioned subsequently to the time of such offer, up to the time when such cause was finally determined; and

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judgment shall in such case be rendered for the sum offered to be confessed, and costs exclusive of such subsequent costs.

Order to pay costs.

SECT. 340. Whenever the court shall make an order against any party in court, for the payment of costs by a specified time, or in default thereof he shall be attached, and such party shall fail to pay such costs in accordance with such order, an attachment may at any time after such default be issued by the clerk of the court, on the adverse party's filing an affidavit with the clerk that such costs have not been paid.

Attachment.

Bill of fees in such case.

SECT. 341. When such attachment shall issue, the clerk shall make out and deliver to the officer executing the same, a bill of all the fees and costs proper to be paid under such order, stating specifically the items thereof.

If paid, attachment shall not be executed.

SECT. 342. If such party shall pay such fees and costs upon the presentment of such bill by said officer, such attachment shall not be executed upon by him; otherwise the officer shall execute the same, without further notice or requisition, upon such party.

Party may require taxation of costs.

SECT. 343. If such party require it, the officer shall take him before some officer or court, authorized to tax such fees and costs; and upon such taxation, such party may show, by competent proof, the payment of such fees and costs, or any part thereof, and the amount thus paid shall be deducted from such bill.

If paid, shall be noted by the officer.

SECT. 344. If such party shall pay the amount of costs taxed against him on such investigation, he shall be discharged, and the officer shall note the facts in the return of the attachment.

If party refuses payment he shall be held in custody

SECT. 345. In case such party fail or refuse to pay the fees and costs specified in such bill, when he is in custody on such attachment, or if he so fail or refuse after such taxation, he shall continue in the proper custody until he be legally discharged.

Length of stay of execution on judgments.

SECT. 346. Upon putting in bail as hereinafter provided, any party, against whom a judgment shall have been obtained, may have a stay of execution thereon from the time of the signing of such judgment until the expiration of the period for which execution thereon may be stayed, as follows:

Not exceeding six dollars, thirty days.

1. If the sum for which judgment may have been obtained, inclusive of costs, do not exceed six dollars, such stay of execution shall be for thirty days:

Over $6, and not exceeding $12, sixty days.

2. If such sum and costs exceed six dollars, and do not exceed twelve dollars, such stay of execution shall be for sixty days:

Over $12, and not exceeding $20, 90 days.

3. If such sum and costs exceed twelve dollars, and do not exceed twenty dollars, such stay of execution shall be for ninety days:

Over $20, and not exceeding $40, 120 days.

4. If such sum and costs exceed twenty dollars, and do not exceed forty dollars, such stay of execution shall be for one hundred and twenty days:

Over $40, and not exceeding $100, 150 days.

5. If such sum and costs exceed forty dollars, and do not exceed one hundred dollars, such stay of execution shall be for one hundred and fifty days:

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ARTICLE 12.

6. If such sum and costs exceed one hundred dollars, such stay of execution shall be one hundred and eighty days.* Over $100, 180 days.

SECT. 347. Any person, wishing for the benefit of such stay of execution, may have the same by procuring one or more sufficient freehold sureties to enter into a recognizance, acknowledging themselves bail for such defendant, for the payment of such judgment, together with the interest and costs accrued and to accrue thereon at the expiration of the stay of execution. Recognizance of replevin bail.

SECT. 348. If such bail be entered before the issuing of execution on such judgment, the same shall be taken by the clerk of the court who shall approve such sureties and enter such recognizance of record. Bail before the clerk.

SECT. 349. Every such recognizance of bail for the stay of execution taken by the clerk of the circuit court, shall be written immediately following the entry of such judgment, and signed by the bail, and shall be substantially in the form following: Form of recognizance of replevin bail.

"I (or we, as the case may be,) acknowledge myself (or ourselves) replevin bail for the payment of the foregoing judgment, together with the interest and costs accrued and to accrue thereon, at or before the expiration of the time allowed by law for the stay of execution on such judgment."

SECT. 350. If an execution be issued before the expiration of the time for which the judgment might be stayed, and bail shall not have been entered, the clerk shall endorse on the writ the date of such judgment, and that the same is repleviable by putting in bail for the stay of execution. If writ issued before bail entered, the clerk shall so endorse on the writ.

SECT. 351. The person or persons against whom such execution shall have been issued, may have a stay of execution on such judgment, until the expiration of the time from the date thereof, for which a stay of execution is allowed by law, by putting in bail as above allowed, to be approved by the officer in whose hands such writ may be for execution. Replevin bail may be entered with the sheriff, &c.

SECT. 352. Such recognizance of bail thus taken by such officer shall be endorsed on such execution, and signed by the bail, and shall be substantially in the form following: Shall be endorsed on the execution.

"I (or we, as the case may be,) acknowledge myself (or ourselves) replevin bail for the payment of the judgment upon which the within execution has issued together with the costs accrued and to accrue thereon, at or before the expiration of the time allowed by law for the stay of execution on such judgment." Form of recognizance before sheriff.

SECT. 353. The officer having such writ shall return the same, and his doings thereon, without further execution thereof, to the clerk's office from which such execution issued, immediately after taking such bail. Shall be returned with the writ.

SECT. 354. Such recognizance of replevin bail taken by such officer, shall be copied by the clerk of such court into his execution docket, in the appropriate column, and shall be deemed and taken to be a record. Shall be copied into the execution docket. Shall be a record.

* For the stay of execution in case of a decree, see Chapter 46, sec. 91.

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PART III.

No writ shall issue until stay has expired.

SECT. 355. Upon putting in bail, as required by the preceding provisions of this article, no execution, or further execution, as the case may be, shall issue until the time fixed by law for such stay of execution shall have expired.

Force and effect of such recognizance of replevin bail.

SECT. 356. Every such recognizance of bail, whether taken by the clerk of such court, or by the officer to whom any such writ of execution may be directed, shall, from the date thereof, be taken and deemed, and shall have the force and effect of a judgment confessed in a court of record, against the persons executing such recognizance, and against their estates, and execution against their estates and bodies may issue in every such case, as in cases of other judgments, for the amount of the judgment thus stayed, together with the costs accrued therein, and also the costs of execution on such judgment. *

Execution thereon, and how executed.

SECT. 357. Execution on such judgment thus stayed, and such recognizance of replevin bail shall isssue jointly against all the parties thereto; but any levy by virtue thereof shall be first made on the property of the defendant or defendants in the original judgment, and if sufficient property be not found, in the just estimation of the officer executing such writ, to satisfy the plaintiff's judgment, and interest, and all costs, the levy shall be completed without delay upon the property of the bail. †

Sale of property on such execution.

SECT. 358. The sale of such property may be advertised to take place at the same time; but the property of the original defendant or defendants shall be first offered for sale, and if the same will not bring the amount of the plaintiff's judgment and interest, and all costs, the officer executing such writ shall forthwith proceed to sell the property of such bail, to make the residue.

Cases in which no stay shall be allowed.

SECT. 359. No stay of execution shall be allowed on judgments obtained against any attorney at law, for moneys by him collected or received as such attorney, or against any individual, individuals, company, or corporation, for any moneys deposited with him or them, or against any clerk of a circuit or other court, sheriff, coroner, county treasurer, county agent, trustee of the county seminary fund, school commissioner, agent of the surplus revenue, or against the sureties of any such officer.

Same.

SECT. 360. No stay of execution shall be allowed on any judgment against any public officer, county officer, treasurer of any congressional township, or school district, or any other officer, who, by virtue of his office, has any moneys belonging to the state, or any such county, township, or district, in his hands, or any of the university, college, or school funds, or any

* A judgment for a certain sum, with interest from a previous date, was replevied, and afterwards, on a writ of error, altered, as respected the interest. *Held*, that this did not affect the validity of the replevin bond. *Weaver* v. *Field*, 1 Blackf. 334.

A judgment-debtor and his replevin-surety are subject to a joint execution by statute; hence, a scire facias, when necessary, may issue against them to have such execution. *Lewis* v. *Oliver*, 1 Blackf. 412.

† A joint execution may issue against a judgment-debtor and his replevin surety. *M'Coy* v. *Elder*, 2 Blackf. 183. See *Carnahan* v. *Brown*, 6 Blackf. 93.

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trust funds belonging to the state, or any county, township, district, or other portion of the people of this state, or against their sureties.

Execution under two last sections, how endorsed.

SECT. 361. The court rendering any such judgment as contemplated in the last two preceding sections, shall order the execution to be endorsed, that the same shall not be replevied or stayed; and executions issuing on any such judgment shall be returnable in sixty days from the date thereof.

No stay in case of principal, if his surety object.

SECT. 362. When any court shall render judgment against two or more persons, any of whom are sureties for any other or others in the contract on which such judgment is founded, there shall be no stay of execution on such judgment, if such sureties object at the time of rendering such judgment; and it shall be so ordered by the court, unless the bail for the stay of execution will undertake specially to pay the judgment, in case the amount thereof cannot be levied of the principal judgment defendant.

Replevin bail may cause execution to issue before the stay expires.

SECT. 363. Any person having become bail for the stay of execution on any judgment, may file with the clerk of the proper court an affidavit made before any person authorized to administer oaths, stating therein that such person verily believes that he will be liable to pay such judgment, and interest and costs thereon, unless execution be issued immediately on such judgment; and such clerk shall thereupon issue execution to the proper officer, who shall proceed thereon to levy the amount of such judgment, interest, and costs.

Other bail may be taken on such execution.

SECT. 364. The person against whom the judgment thus replevied was rendered, may replevy the same for the remainder of the time for which a stay of execution is allowed by law, by entering other sufficient bail on such judgment before the proper clerk, to be approved as in other cases, if execution shall not have been issued; or such judgment may be replevied after the issuing of such execution, by entering bail with the sheriff, as provided in other cases.

Force and effect of such new recognizance.

SECT. 365. Such new recognizance of bail shall, in like manner as in the case of the original bail, be deemed and taken, and shall have the force and effect of a judgment by confession, and execution may be issued thereon, as it might have been in the case of the first bail, and such first bail shall be thereby discharged.

Recognizance shall not discharge original judgment.

SECT. 366. The taking of any recognizance specified in this article for the stay of execution, shall not operate as a satisfaction of the original judgment, nor to extinguish or affect any lien created thereby upon the estate of the original judgment debtor. *

Judgment docket.

SECT. 367. The clerk of every court of record shall provide and keep a docket book, in which he shall register, within thirty days after each term of such court, in alphabetical order, a statement of each judgment rendered at such term, containing,

* See *Doe* v. *Roe*, 2 Blackf. 195 — *Elliott* v. *Moore*, 5 Blackf. 270 — *Carnahan* v. *Brown*, 6 Blackf. 93.

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1. The names at length of all the parties to such judgment;
2. The amount of the debt, damages, or sum recovered, with the aggregate amount of the costs;
3. The day of the month and year when such judgment was rendered;
4. If such judgment was recovered against several persons, such statement shall be repeated under the name of each person against whom the judgment was recovered, in the alphabetical order of their names, respectively.

Recognizances of replevin bail shall be docketed.

SECT. 368. Such clerk shall include in the register of judgments entered in said docket, all recognizances of bail for the stay of execution, whether taken before such clerk, or returned by the sheriff, immediately after the taking or the return thereof, specifying therein the judgment replevied, the amount thereof, and the date of such recognizance, and the names of the bail.

Such docket shall be open to examination

SECT. 369. Such docketing of each judgment and recognizance shall be a matter of record, and open, during the usual hours of transacting business, to the search and examination of all persons desiring the same.

Penalty for omitting to docket judgment, &c.

SECT. 370. Every clerk who shall omit or neglect the duty of registering any such judgment, or recognizance of replevin bail in said docket, as hereinbefore required, shall be liable to any person injured, for the amount of damages sustained by such omission or neglect, to be recovered by the injured party, in an action on the case against such clerk, or by a suit on his official bond, against him and his sureties.

ARTICLE XIII.

Of executions and the duties and liabilities of officers thereon.

EXECUTION; LIEN; PROPERTY EXEMPT AND LIABLE; PRINCIPAL AND SURETY; DELIVERY BOND.

SECTION
371. Execution to collect judgment.
372. Fi. fa. or ca. sa.
373. Fi. fa. to whom directed.—Ca. sa. shall not issue while fi. fa. unreturned, and vice versa.
374. If no sheriff or coroner, how writ may be executed.
375. Power, liability, etc., of the person appointed, etc.
376. The amount of personal property exempt from execution.
377. Not to exceed $100, excepting certain articles, etc.
378. Sheriff shall endorse time of receiving writ.
379. Liens on personal property by virtue of executions, etc.
380. Lien in case of judgment on official bond.
381. Gold and silver coin and current bank notes subject to levy.
382. Bills of banks, etc. may be sold as personal property.
383. The interest of the mortgagor, etc., in personal estate may be sold, etc.
384. Property of principal taken before surety's.
385. Delivery bond.
386. Effect thereof and measure of damages in suit thereon.
387. No stay on judgment on such bond
388. Principal in such bond may sell property and account for the proceeds, etc.

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PROPERTY DESIGNATED; APPRAISEMENT THEREOF.

SECTION
389. Debtor shall designate property.
390. If the debtor fail to do so, officer may select, etc.
391. If debtor fail to designate sufficient property, officer shall complete the levy.
392. But officer shall not first levy on principal messuage, etc.
393. Personal estate of debtor shall be first sold except the debtor otherwise direct.
394. But officer need not levy in such case, if doubt of the ownership.
395. Property shall not sell for less than two thirds its appraised value;
396. Except property hereafter fraudulently conveyed.
397. Officer shall cause property to be appraised.
398. Appraisers, how selected.
399. If defendant fail to choose, officer shall choose for him.
400. How supplied if appraisers fail or refuse to act.
401. Penalty for refusing to act as appraiser.
402. Appraisers shall return schedule.
403. Shall verify the same under oath.—Officer may administer such oath.
404. If property will not sell, the appraisement shall be returned with the writ.
405. The levy and such return shall continue a lien, etc.
406. Revaluation may be had.
407. Not more than one offer to sell under the same execution, unless at the costs of the creditor.
408. Cases in which property shall not be appraised.

SALE; PROCEEDINGS THEREIN; DEED TO PURCHASER, ETC.

409. Property shall sell for the best price above two thirds the appraised value.
410. But the rents and profits for not more than seven years shall be first offered.
411. Value of rents and profits shall be appraised.
412. Shall be sold by the year, etc.

SECTION
413. Sale of real estate, where made and in what parcels.
414. Notice of sale of real estate, how given.
415. Notice of sale of personal estate, how given.
416. Personal estate shall be subject to view when exposed for sale.
417. If property not sufficient, another writ may issue.
418. Proceedings under such other writ.
419. If property cannot be sold, etc., officer shall so make his return.
420. Vendi. exponas may issue.
421. Levy and return shall remain a lien.
422. If sheriff, etc., die before the writ be executed, it shall be executed by his survivor.
423. Officer receiving execution from another county may transmit his return, etc., by mail.
424. Deed to purchaser of real estate.
425. If purchaser die before the deed is made, deed shall be made to his heirs, etc.
426. Officer dying before making the deed, his successor, etc., shall convey.
427. Penalty, etc., for selling without notice.
428. Officer or his deputy may not purchase property sold by him.
429. Purchaser failing to pay the purchase money, may be proceeded against on motion.
430. Or officer may re-expose property to sale, and proceed against delinquent for the deficiency and costs.
431. Officer shall render surplus to the debtor.

CAPIAS AD SATISFACIENDUM

432. Ca. sa.
433. Affidavit for ca. sa.
434. Last section explained.
435. Sci. fa. on such affidavit.
436. After ten days' service of sci. fa. court may hear such affidavit.
437. If default be made, court shall proceed to hear, etc.
438. Trial on appearance of parties, etc.
439. When ca. sa. may issue.
440. But no ca. sa. shall issue if debtor surrender his money, effects, etc.

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SECTION
441. Otherwise the writ shall forthwith issue.
442. If debtor has not been held to bail etc., capias ad respondendum may issue.
443. Debtor may give appearance bail.
444. Recognizance, to whom payable.
445. Force and effect thereof.
446. How far appearance bail shall be liable.
447. Ca. sa. to another county how executed.

INSOLVENT'S DISCHARGE FROM CA. SA.; DEATH OF DEBTOR, ETC.

448. Person arrested on a ca. sa. may discharge himself by giving up all his property, effects, etc., under oath.
449. Or by making oath that he has no property.
450. He may be taken before a judge or justice to make such oath.
451. Power of such judge or justice.—Officer's return.
452. Notice to the creditor.
453. Same.—Creditor may examine such debtor.
454. Persons complying with the last six sections shall be discharged from arrest.

SECTION
455. Officer and his sureties may defend as to such discharge under the general issue.
456. Property thus delivered on a ca. sa. shall be sold as in other cases.
457. Officer's return.
458. Death of prisoner on ca. sa. shall not discharge the judgment.
459. If prisoner escape, fi. fa or ca. sa. may issue.

OFFICER TO PAY OVER MONEY, ETC.; HIS LIABILITY; RETURN DAY OF EXECUTIONS.

460. Officer collecting money, shall pay over within twenty days.
461. Officer failing to levy, how liable.
462. Same for failing to return execution.
463. Same for failing to pay over to creditors.
464. Same for failing to pay surplus to the debtor.
465. Damages, interest, and costs recoverable under the last four sections.
466. Officer may be amerced on motion.
467. Judgment in such case.
468. Injured party may proceed by suit, etc.
469. Executions, when returnable.

Execution to collect judgment.

Executions; liens; property exempt and liable; principal and surety; delivery bond.

SECT. 371. Whenever judgment shall be rendered in any court of record, for any debt, damages, sum of money, or costs, and execution thereon is not stayed, or after the expiration of any such stay, the party in whose favor such judgment was rendered may have an execution directed to the sheriff, or other proper officer, to collect the amount of such judgment.*

Fi. fa. or ca. sa.

SECT. 372. Such execution may be either against the goods and chattels, lands and tenements, of the person against whom such judgment was rendered subject to execution, or against his body, as hereinafter provided.†

Fi. fa. to whom directed. Ca. sa. shall not issue while a fi. fa. is unreturned, and vice versa.

SECT. 373. Executions against the property of any party may be directed to the sheriff, or other proper officer of any county in this state, but no execution against the body shall be issued, whilst an execution against the property remains unre-

*One execution cannot be issued upon two separate judgments. *Doe* v. *Rue*, 4 Blackf. 263.

†See ante pages 453, 454, 455, sections 1, 2, 8, 9; page 456, sections 14, 15, 16. See also ante page 462, 463, sections 48, 49, 50.

Lands purchased by the debtor after the judgment, and aliened before execution, to a bona fide purchaser, are bound by the lien of the judgment. *Ridge* v. *Prather*, 1 Blackf. 401.

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turned, nor shall an execution against the property be issued while there is an execution against the body unreturned.*

If no sheriff or coroner how writ may be executed.

SECT. 374. Where there is no sheriff or coroner, or such sheriff and coroner are disqualified from acting, by reason of interest or otherwise, the court in term, or any judge thereof in vacation, may, by an order endorsed on such execution, direct the same to be delivered to any person not interested nor of kin to the parties.

Power liability, &c., of the person appointed.

SECT. 375. The person thus receiving such execution, shall, in respect thereto, be deemed to have all the power and authority of the sheriff of such county to execute such writ, and shall be liable, in all respects, to all the provisions of law concerning such execution, so far as the same can be applicable.

The personal property exempt from execution.

SECT. 376. The following personal property, when owned by any person having a family, or being a householder, shall be exempt from levy and sale under any execution, to-wit: The necessary wearing apparel of such person and his family; the family bible, and school books used by or in the family; one cow and calf, six sheep and the wool thereof, two beds and the necessary bedding therefor, household and kitchen furniture, not to exceed in value fifteen dollars, one chopping axe, one plough, one weeding hoe, one loom, one spinning wheel, one reel, and the necessary provisions to supply the family for two months; and also the arms and accoutrements required by law to be kept by such person for military duty, or with which he shall have furnished himself as the member of any military company.

Not to exceed one hundred dollars except, &c.

SECT. 377. But the whole amount of property so exempt from execution shall in no case exceed the value of one hundred dollars, exclusive of such wearing apparel, bible, and school books, arms and accoutrements, and the two months provisions; and in all cases, the judgment debtor may claim as exempt from execution any other article or articles, so that the whole value of the property so exempted shall not exceed one hundred dollars.

Other articles may be exempted.

Sheriff shall endorse time of receiving the writ.

SECT. 378. Upon the receipt of any execution, it shall be the duty of the sheriff, or other officer, to endorse thereon the year, month, day, and the hour of the day when he received the same.

Liens on personal property by virtue of executions, &c.

SECT. 379. When an execution shall be issued against the property of any person, his goods and chattels situated within the jurisdiction of the officer to whom such execution shall be delivered shall be bound only from the time of the delivery of

*As to a fi. fa. and fee bill to another county, see post sections 478 and 479 of this chapter.

A judgment creditor, having sued out an execution, may abandon it before it is executed, and sue out another of a different sort. So, if part only of the judgment be levied, and the execution be returned, the plaintiff may have another writ of the same or a different sort, at his election, for the residue. *Steele* v. *Murray*, 1 Blackf. 179.

If an execution improvidently issue, — for example, a fi. fa. without a judgment, or while the defendant's real estate is held by a venditioni exponas, — it will be set aside on motion at law, due notice of the motion having been given. But a court of chancery will not interfere, except to stay the proceedings when necessary, until the motion can be heard. *Lasselle* v. *Moore*, 1 Blackf. 226.

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the execution to be executed; but if there be several executions, whether issued out of a court of record or not of record, or by a justice of the peace, against the same defendant, in the hands of different officers, that execution, without regard to the time of its delivery, under which the first levy shall be made, shall have the preference, and all liens created by the prior delivery of any other execution, shall be divested in favor of the execution thus first levied.*

Lien in case of judgment on official bonds.

SECT. 380. In all cases of judgments on the bonds of any officer, at the suit of the state of Indiana, the real and personal estate of the debtors shall be bound from the date of the process by which such suit was instituted.

Gold and silver coin and current bank notes subject to levy.

SECT. 381. Upon execution against the property of a judgment debtor, the officer may levy upon any current gold or silver coin, or current bank notes, belonging to such judgment debtor, and may pay and return the same as so much money collected, without exposing the same to sale.

Bills, &c., may be sold as personal property.

SECT. 382. Upon execution the officer may levy upon and sell as other personal estate, any bills or other evidences of debt issued by any moneyed corporation or bank, or by this state, or the government of the United States, and circulated as money, which shall belong to the judgment debtor.†

The interest of the mortgagor, &c., in personal estate may be sold

SECT. 383. When goods or chattels shall be pledged, assigned, or mortgaged for the payment of money or the performance of any contract or agreement, the right and interest in such goods or chattels of the person making such pledge, assignment, or mortgage may be sold on execution against him; and the purchaser shall acquire all the right and interest of such person, and shall be entitled to the possession of such goods and chattels, on complying with the terms and conditions of such pledge, assignment, or mortgage.

Property of principal taken before surety's.

SECT. 384. If it shall appear upon the face of any writ of execution, or by endorsement thereon, made by the officer issuing the same, that any of the persons against whom such execution may be issued, is only surety for any other person against

*As to the lien of a judgment or decree, or an execution issued to another county, see ante pages 454 and 455, sections 3 to 11; See also ante page 456, sections 14, 15, 16.

A fieri facias in *A's* favor was delivered to the sheriff, but, before it was levied, another in favor of *B* was delivered to a constable and levied. *A's* execution was then levied on the same property. *Held*, that if *B's* execution be duly proceeded in to a sale, it has the preference; but if, instead of being so perfected, it be recalled, the lien of *A's* execution stands in force. *M'Call* v. *Trevor*, 4 Blackf. 496.

A sale of goods by an execution defendant, though bona fide and for value, if made after the delivery of the execution to the sheriff, does not affect the lien of the execution. Ibid.

As to mortgages, &c. of personal property, see *Jordan* v. *Turner*, 3 Blackf. 309 — *Watson* v. *Williams*,, 4 Blackf. 26 — *Hankins* v. *Ingols*, 4 Blackf. 35 — *Hamilton* v. *Mitchell*, 6 Blackf. 131 — *Foley* v. *Knight*, 4 Blackf. 420.

†*A* deposited a note for the payment of money against *C*, to be accounted for by *B* to *A*, when collected. *B* afterwards gave up this note to the sheriff, to be sold on a fee bill against *A*, *B*, and *D*, in a case in which *A* was the principal, and *B* and *D* were his sureties. The sheriff accordingly levied upon and sold the note, to satisfy the fee bill. *Held*, that *B*, for this breach of duty, was liable to *A* in an action on the case. *Held*, also, that a note for the payment of money is not liable to execution. *M'Clelland* v. *Hubbard*, 2 Blackford, 361. But see the 14th article of this chapter, post sections 472 to 477, inclusive.

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whom such execution may be issued, the officer executing the same shall first sell so much of the estate of the principal defendant named in such execution as he may be able to find, before he shall sell any of the estate of such surety, unless such officer may be otherwise directed by such surety.

Delivery bond.

SECT. 385. When any personal estate shall be taken in execution by virtue of the provisions of this article, the officer taking the same may return such property to the execution-defendant, upon such defendant's executing a bond payable to the plaintiff in execution in a penalty of double the value of the property so released, with sufficient surety, and conditioned for the delivery of such property to such officer at a time and place named in such condition, to be sold according to law; which bond shall be by such officer returned into the office from whence the execution by virtue of which such property may have been taken, issued.

Effect thereof, and measure of damages in suit thereon.

SECT. 386. Such bond shall be valid in law, and an action may be had thereon whenever the condition thereof may have been violated, and on recovery being had thereon, the amount due on such execution shall be assessed in favor of the plaintiff, provided the property so taken be of sufficient value to satisfy the same; and if not, then the value of the property so taken; and in all such cases ten per centum damages shall be assessed on the amount so recovered.*

No stay on judgment on such bond.

SECT. 387. On a judgment obtained on such bond there shall be no stay of execution, and the officer to whom execution shall issue shall take no delivery bond for any property levied upon under said execution; and execution issued on such judgment shall be returned in thirty days.

*In an action on a penal bond conditioned for the delivery of property at a certain time and place, the declaration need not aver a demand of the property at the place. *Mitchell* v. *Merrill*, 2 Blackf. 87. See also, *English* v. *Finicey*, 5 Blackf. 298.

The officer executing the writ and taking the delivery bond is a competent witness to prove the value of the property, in an action on such bond. *Chinn* v. *Perry*, 2 Blackf. 268.

A bond conditioned for the delivery of goods taken on execution was in the usual form, except that it did not state to whom the property was to be delivered. *Held*, that the legal effect of the condition of the bond that the property should be delivered at the time and place specified, was, that it should be then and there delivered to the sheriff. *Held*, also, that a declaration in a suit on such bond, setting out the condition, &c., should aver that the property had not been delivered to the sheriff. *Eldridge* v. *Yantes*, 6 Blackf. 72.

Declaration in debt by an execution-plaintiff on a delivery bond, payable to the sheriff, conditioned for the delivery of the property on a certain day. Suggestion on the record, that the bond is defective in not being made payable to the plaintiff. Breach, that the property was not delivered on the day specified in the condition, nor at any other time since the execution of the bond. *Held*, on general demurrer, that the declaration was good. *Hawkins* v. *Johnson*, 3 *Id.* 46. See post, section 485 of this chapter. See also *Evans* v. *Shoemaker*, 2 Blackf. 237. *Thompson* v. *Wilson*, 1 *Id.* 358.

A declaration in detinue may be objectionable on general demurrer, if it do not aver the value of the property; but the averment of value in trespass or trover, or in suits on contracts for the delivery of property, is only matter of form. *Hawkins* v. *Johnson*, 2 Blackf. 46.

If in a suit on a delivery bond, the plaintiff obtain judgment on a demurrer to the declaration, the damages must, in the absence of any agreement of the parties, be assessed by a jury. *McKay* v. *Craig*, 6 Blackf. 168. *Thompson* v. *Wilson*, 1 *Id.* 358. *Campbell* v. *Wooden*, 5 *Id.* 80.

The damages against the defendant in such suit cannot be for more than the value of the property agreed to be delivered, the costs and ten per cent. damages. *Campbell* v. *Wooden*, 5 Blackf. 80.

See *Barber* v. *Summers*, 5 Blackf. 339.

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Principal in such bond may sell property and account for the proceeds.

SECT. 388. Nothing contained in the previous sections shall prevent the principal in any delivery bond from selling such property, or any part thereof, at private sale, for not less than two thirds of its appraised value, and paying over the proceeds thereof to such officer, instead of returning such property, as required by such delivery bond; and by so doing, the condition of such bond shall be discharged.

Property designated: appraisement thereof.

Debtor shall designate property to be levied upon.

SECT. 389. When any writ of execution shall issue against the goods and chattels, lands and tenements of any person, it shall be the duty of the officer into whose hands such writ may come to be executed, to levy the same upon such part of the estate of such person as such person may designate; but in the exercise of such privilege, it shall be incumbent on such person to make such designation in sufficient time to enable the officer to levy, advertise, and sell property before the return day of such execution.

If the debtor fail to do so, officer may select, &c.

SECT. 390. When the execution debtor shall fail or refuse to designate such property, the officer having such writ shall proceed to levy the same upon such property of the debtor as can be found, subject to execution.*

If debtor fail to designate sufficient, officer shall complete the levy.

SECT. 391. If such debtor shall fail to designate a sufficiency of property in the just opinion of such officer, to satisfy such execution, the officer shall proceed to levy the execution upon so much other property of the debtor, which can be most readily found, as will be sufficient, in addition to the property designated, to satisfy such execution.

But officer shall not first levy on principal messuage, &c.

SECT. 392. But when no sufficient designation of the property to be levied upon shall be made by the debtor, such execution shall not be levied upon the principal messuage, lands, or tenements of such debtor, or on which he may reside, unless a sufficiency of other property cannot be found to satisfy the execution or executions in the hands of such officer.

Personal estate of debtor shall be first sold, except, &c

SECT. 393. In all cases the real estate of every execution debtor shall be exempt from levy and sale until his personal estate subject to execution shall be first levied upon and sold; except where he shall voluntarily direct otherwise, or unless such per-

*The sheriff's return to a fieri facias was, that he had not levied because the plaintiff would not give him an indemnity. *Held*, that this return was unknown to the law, and that the cause must stand as if no return were made. *Bosley* v. *Farquar*, 2 Blackf. 61.

Even if such indemnity could be required in any case, it should be demanded as soon as the circumstances authorizing the demand were known to exist. *Ibid.*

If the sheriff, in consequence of vague rumors as to whether certain goods are the debtor's or not, return nulla bona, without having the right of property tried by a jury, he will be liable for a false return, on proof that the goods were subject to the execution. *Ibid.*

If a sheriff take and sell the property of A. on an execution against B., he is liable to the owner, in trespass or trover, without demand. *Jamison* v. *Hendricks*, 2 Blackf. 94. Replevin would lie in such case. See *Chinn* v. *Russell*, 2 *Id.* 172.

As to the power of an officer to break open doors, &c., in the execution of process, see note to the case of *McGee* v. *Givan*, 4 Blackf. 18.

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sonal estate in the just opinion of such officer is insufficient to pay and satisfy the amount of such execution.*

Officer need not levy if there be doubt of the debtor's ownership.

SECT. 394. Nothing contained in the preceding sections of this article shall be construed to require of any sheriff or other officer to levy upon any property selected by any execution debtor to be sold on execution, if there exist any reasonable doubt that such debtor is the real or bona fide owner of the property so selected.

Property shall not sell for less than two thirds its appraised value.

SECT. 395. No goods and chattels or lands and tenements of any execution debtor shall be sold on execution issued out of any court of record for less than two thirds of the fair value thereof, at the time of such sale, exclusive of all liens, mortgages, or incumbrances thereon.

Except property hereafter fraudulently conveyed.

SECT. 396. But the provisions of the preceding section shall not be construed to apply to the levy and sale of real estate, which may hereafter be fraudulently conveyed or transferred by the execution debtor, with a view to defraud his creditors.†

Officer shall cause property to be appraised.

SECT. 397. The officer to whom any such writ of execution shall be delivered to be executed, shall, before the sale, unless otherwise directed by the execution debtor, proceed to ascertain the fair value of such property.

Appraisers, how selected.

SECT. 398. For that purpose, two disinterested householders of the neighborhood where the levy was made, shall be selected as appraisers; one of whom shall be chosen by the execution debtor, and the other shall be chosen by the plaintiff, his agent or attorney; or in the absence of the plaintiff, his agent, and attorney, by the officer executing such writ; and said appraisers shall forthwith proceed to value such property according to its fair value at the time; and in case of their disagreement as to such value they shall choose a like disinterested householder of the neighborhood, and with his assistance they shall complete such valuation.

If execution debtor fail to chooose, officer shall choose for him.

SECT. 399. In case such execution debtor shall fail to choose an appraiser within three days after notice of such levy, such officer shall choose an appraiser for him, who shall proceed in all respects as if he had been chosen by such execution debtor.

How supplied if appraisers refuse to act.

SECT. 400. In case any of said appraisers shall fail to complete such valuation, such plaintiff, his agent, or attorney, or such officer in their absence, or the execution debtor, or the appraisers, if the two remain who were first chosen, as the case may be, shall choose an appraiser in the place of the one before chosen by him or them, and refusing to act; or if such execution debtor shall in such case fail to choose such ap-

*A purchaser of land at sheriff's sale is not obliged to show that the debtor had not personal property to satisfy the judgment. It is only necessary for him to show the judgment of a competent court, and the kind of execution which authorizes the sheriff to sell. He has a right to presume that all the intermediate proceedings are correct. *Frakes* v. *Brown*, 2 Blackf. 295.

But if the purchaser of real estate at sheriff's sale be the execution-plaintiff, he is considered a purchaser with full notice, and accountable for all irregularities. *Harrison* v. *Doe*, 2 *Id.* 1. See *Armstrong* v. *Jackson*, 1 *Id.* 210. *Doe* v. *Smith*, 4 *Id.* 228.

†This section as reported by the revisors, applied to fraudulent conveyances and transfers of property, as well before as subsequent to the passage of this act

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praiser within two days after notice of such refusal to act by the appraiser chosen by him, such officer shall choose an appraiser for him; and any appraiser thus chosen shall proceed in all respects as if he had been chosen in the first instance.

Penalty for refusing to act as appraiser.

SECT. 401. Every householder chosen as an appraiser as aforesaid, who shall refuse to act as such, except in cases of sickness of himself or family, or unavoidable accident preventing him, shall upon conviction thereof in any court of competent jurisdiction be fined in any sum not exceeding fifty dollars.

Appraisers shall return schedule.

SECT. 402. Upon the completion of such appraisement the said appraisers shall return a schedule thereof to such officer in writing, specifying therein the value of each tract, lot, or parcel of real estate, and of the several articles of personal property, which may have been levied upon by virtue of such execution, subject to appraisement.

Shall verify the same under oath.

SECT. 403. Said appraisers shall take and subscribe an oath or affirmation annexed to such appraisement, in substance as follows: "We the undersigned do solemnly swear (or affirm) that the property mentioned in the foregoing schedule is, to the best of our judgments, worth the sums specified and set down therein, the same being the fair and just value thereof at this time, [exclusive of any liens, mortgages, or incumbrances existing thereon]:" Which oath or affirmation such officer is hereby fully authorized to administer, and also to attest the same when taken and subscribed by such appraisers.

Officer may administer such oath.

If property will not sell, the appraisement shall be returned with the writ.

SECT. 404. Whenever any of the property thus appraised cannot be sold for two thirds of such valuation, it shall be the duty of the officer by whom such levy shall have been made, when he returns such execution, to return said appraisement therewith, stating in his return such failure to sell.*

The levy and such return shall continue a lien, &c.

SECT. 405. Such levy and return shall constitute and remain a lien on the property thus remaining unsold, and a writ of venditioni exponas may issue for the sale thereof, as in other cases.

Re-valuation may be had.

SECT. 406. When any such writ of venditioni exponas shall issue, either party may have a re-valuation of the property levied upon, by paying the expenses of such re-valuation.

Not more than one offer to sell under the same execution, unless at the costs of the creditor.

SECT. 407. The officer to whom any such execution shall be delivered, shall proceed to execute the same with as little delay as possible; but he shall not expose the same property to sale more than once under the same execution, unless the execution creditor will pay the costs and charges of such additional offer to sell.

Cases in which property shall not be appraised.

SECT. 408. The provisions of this article authorizing the appraisement of property, before exposing the same to sale, shall not apply to sales of property of any state, county, or township officers, or executors, administrators, or guardians, and their sureties on executions upon judgments obtained against them as such; nor to attorneys and counsellors at law for failing to

* An execution when returned is a record, and may be proved by a copy certified under the seal of the court. *Hobson* v. *Doe*, 4 Blackf, 487.

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pay over moneys collected by them as such, nor against any bank, savings' institution, or insurance office, nor to judgments on forfeited delivery bonds. ARTICLE 13.

Sale: proceedings therein: deed to purchaser, &c.

Property shall sell for best price above two-thirds the appraised value.

SECT. 409. Real and personal estate taken in execution shall sell for the best price the same will bring at public auction over and above two thirds of the appraised value thereof as above herein provided.

But the rents and profits for not more than seven years shall be first offered.

SECT. 410. But the estate or interest of the judgment debtor in any real estate shall not be sold on execution until the rents and profits thereof for a term not exceeding seven years, of such estate or interest, shall have first been offered for sale at public auction; and if the same will not sell for a sum sufficient to satisfy such execution, then the estate or interest of the judgment debtor shall be sold by virtue of such execution.

Value of rents and profits shal be appraised.

SECT. 411. But before the rents and profits shall be sold as aforesaid, the same shall be appraised at their fair cash value at the time, estimating and setting down such value for each year separately by the appraisers chosen as aforesaid.

Shall be sold by the year.

SECT. 412. So many years, not exceeding such term of seven years, shall be sold as will pay and satisfy the principal, interest, and costs due and accruing on such execution, and no more; but if a fraction of a year shall occur in making up the sum due as aforesaid, such fraction shall be counted and conveyed as a whole year to the purchaser, and shall entitle him to the whole year in which such fraction occurs, without his paying the balance of the estimated value of such year.

Sale of real estate, where made, and in what parcels.

SECT. 413. Real estate taken by virtue of any execution, shall be sold at the door of the court house of the county in which the same is situate; and if such estate shall consist of several known lots tracts or parcels, such lots, tracts, or parcels shall be offered separately; and no more of any real estate shall be offered for sale than shall appear necessary to satisfy the execution, unless the same is not susceptible of division.

Notice of sale of real estate, how given.

SECT. 414. The time and place of making sale of any real estate, pursuant to an execution, shall be publicly advertised by the officer making the sale, for at least twenty days successively, immediately previous to the day of sale, by posting up written or printed notices thereof in three of the most public places in the township in which the real estate is situate, and a like advertisement at the door of the court house of the county, and also by advertising the same for three weeks successively in a newspaper printed nearest to such real estate, if any such newspaper be printed within the jurisdiction of such officer.

Notice of sale of personal estate, how given

SECT. 415. Previous notice of the time and place of the sale of any goods and chattels by execution, shall be given for ten days successively, by posting up written or printed notices

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thereof in at least three of the most public places in the township where such sale is to be made.

Personal estate shall be subject to view when exposed for sale.

SECT. 416. No personal property shall be sold unless the same shall be present and subject to the view of those attending such sale, and shall be sold in such lots and parcels as shall be calculated to bring the highest price.

If property taken not sufficient, another writ may issue.

SECT. 417. If the property of the execution debtor, levied upon by virtue of any execution, shall not sell for a sum sufficient to pay and satisfy the amount to be collected by virtue of such execution, the officer executing the same shall make return of his doings thereon; and upon such return another execution when required, shall issue, upon which the officer issuing the same shall endorse the sum or sums previously levied on any former execution or otherwise paid.

Proceedings under such other writ.

SECT. 418. The officer shall proceed upon such other writ as in other cases, to levy upon and sell the property of such execution debtor to pay and satisfy the balance so remaining unpaid and unsatisfied; and execution may issue in like manner as often as necessary until the whole amount to be collected has been fully paid and satisfied.

If property cannot be sold, &c. the officer shall so make his return.

SECT. 419. Whenever it shall so happen that any property exposed to sale on execution, shall not sell for want of bidders, or of sufficient time to make such sale, or whenever it shall be so agreed by the parties to such execution, their agents or attorneys, the officer returning such execution shall make his return according to the fact, setting forth the property levied upon, and the reason why the same remains unsold.

Vendi. exponas may issue.

SECT. 420. Upon such return being made, a writ of venditioni exponas may be issued, commanding the proper officer to advertise and sell such property according to the preceding provisions of this article respecting the sale of property levied upon by virtue of an execution.

Levy and return shall remain a lien.

SECT. 421. Such levy and return shall continue and constitute a lien on the property remaining unsold, by virtue of which the same may be held and sold on a writ of venditioni exponas, if issued before the return day next after the return day of such previous execution.

If sheriff, &c., die before a a writ is executed, it shall be executed by his successor, &c.

SECT. 422. If any officer to whom an execution shall have been delivered, shall die or shall go out of office before such writ shall have been executed, his successor, or any officer authorized by law to discharge the duties of such office in such case, shall proceed thereon in the same manner that the officer to whom such writ was originally delivered might have done.

Officer receiving execution from another county, may transmit his return by mail.

SECT. 423. Whenever an execution shall be issued in any county in this state, or from the supreme court directed to the sheriff or coroner of any other county, it shall be lawful for the sheriff or coroner, having received such execution and discharged all the duties therein required by law, to enclose such execution and forward the same by mail to the clerk of the court by whom it was issued; and on proof being made by such sheriff or coroner that such execution was mailed in reasonable or sufficient time

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to reach the office from which it was issued within the time prescribed by law, such sheriff or coroner shall not be liable to any amercement or penalty for any failure of the safe arrival of such execution; but no officer executing any such writ shall send by mail any money made thereon, unless he shall be specially instructed so to do by the judgment creditor, his agent or attorney.

Deed to purchaser of real estate.

SECT. 424. Upon the sale of real estate or of any term not exceeding seven years as above specified by virtue of an execution and the payment of the purchase money, the officer selling such estate or term shall make and execute to the purchaser a deed of conveyance for the premises, which shall be valid and effectual to convey all the estate, right, title, and interest of the execution debtor therein, to such purchaser.*

If purchaser die before the deed is made, deed shall be made to his heirs, &c.

SECT. 425. In case the purchaser of any real estate upon execution, having paid the purchase money therefor, shall die before a deed of conveyance shall have been executed to him for such real estate, the officer making such sale shall convey such real estate to the heirs or devisees of such deceased person.

Officer dying before making the deed, his successor, etc., shall convey.

SECT. 426. If any officer by whom any such sale of real estate or such term of years shall have been made on execution shall die or go out of office before executing a conveyance therefor to the purchaser or other person entitled to such conveyance, the successor of such officer, or any officer authorized by law to discharge the duties of such office in such case, shall if the purchase money shall have been paid, make and execute the necessary conveyance or conveyances, in pursuance of such sale, in the same manner and with the like effect as the officer making such sale.

Penalty, &c. for selling without notice, &c.

SECT. 427. Any officer who shall sell any real estate, without giving the previous notices herein directed, or shall sell the same otherwise than in the manner herein prescribed, shall forfeit and pay to the party injured, two hundred dollars, in addi-

*Sheriff's sales of real estate are within the statute of frauds. *Ennis* v. *Waller*, 3 Blackf. 472.

A purchaser of real estate at sheriff's sale obtains all the interest that the execution debtor had in the property. *Way* v *Lyon*, 3 Blackf. 76.

NOTE.—As to the right of the purchaser to maintain an action for any injury to the estate after the sale and before the execution and delivery of the sheriff's deed, see ante page 455, section 12.

If the purchaser of real estate at sheriff's sale be the execution-plaintiff, he is considered a purchaser with full notice, and accountable for all irregularities. *Harrison* v. *Doe*, 2 Blackf. 1. *Doe* v. *Smith*, 4 *Id.* 228. *McClure* v. *McCormack*, 5 *Id.* 129, see also the authorities cited ante page 456;—note to section 17.

A sheriff's deed may be admissible as evidence, though it recite incorrectly the amount of the execution under which the sale was made; a particular recital of the execution not being necessary to the validity of the deed. *Doe* v. *Rue*, 4 Blackf. 263.

If land be sold on execution which, as to the amount, varies from the judgment, the purchaser, or person claiming under him, may have the execution amended by the judgment. *Ibid.*

A mistake in the amount of an execution is amendable at any time, by the judgment. *McCall* v. *Trevor*, 4 Blackf. 496.

If an execution be proved to be lost, its contents may be proved by parol evidence. *Nooe* v. *Higdon*, 4 *Id.* 184.

A sheriff's deed is good against the execution-defendant and his heirs or devisees, though it be not acknowledged or recorded. *Dixon* v. *Doe*, 5 *Id.* 106.

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tion to such other damages as such party may have sustained, to be recovered from such officer, or from him and his sureties, in a suit on his official bond.*

Officer may not purchase property sold by him.

SECT. 428. The officer or his deputy making the sale of any property by virtue of an execution, shall not, either directly or indirectly, purchase any property whatever at any sale by virtue of such execution; and all purchases by such officer or deputy, or to the use of either of them, shall be void, both as against the execution creditor and debtor.

Purchaser failing to pay the purchase money may be proceeded against on motion.

SECT. 429. Whenever any property, real or personal, shall be sold by virtue of any execution, and the purchaser thereof shall fail or refuse to pay the purchase money, he shall be liable, on motion by the officer making such sale, in the court out of which such execution issued, five days' notice of such motion having been given, to a judgment for the amount of the purchase money, and ten per centum damages thereon, together with the costs of said motion, and no stay of execution shall be allowed on such judgment.†

Or officer may re-expose to sale and proceed against delinquent for the deficiency and costs.

SECT. 430. Or such officer, instead of proceeding by notice and motion as aforesaid, may re-expose such property to sale on the same day; or he may re-expose the same to sale on a subsequent day, by giving notice thereof as in other cases of sales on execution; and if the amount of such second sale shall not be equal to the amount of such first sale and the costs of the second sale, said first purchaser shall be liable for the deficiency, and ten per centum damages thereon, for the use of such officer, to be recovered by judgment on the like notice and motion as provided in the last preceding section.‡

Officer shall render surplus to the debtor.

SECT. 431. Whenever any goods and chattels, or lands and tenements, shall be sold on execution, by virtue of any of the provisions of this article, for more than will satisfy such execution and all interest and costs, the officer making such sale shall render the overplus to the execution debtor or debtors.

Capias ad satisfaciendum.

Ca. sa.

SECT. 432. No writ of execution shall be issued, except as herein after provided, by any court, officer, or justice of the peace, against the body of any execution debtor.

* See *Armstrong* v. *Jackson*, 1 Blackf. 210—*Givan* v. *Doe*, 5 Blackf. 260.

An execution debtor paid to the sheriff the amount due, except a small balance, which could not then be ascertained, and promised to pay that when called on. The sheriff afterwards, by virtue of the execution, on which fifteen dollars and twenty-five cents were due, without calling on the debtor, sold one hundred acres of land, worth fifteen or twenty dollars an acre, for three hundred and fifty-one dollars and twenty-five cents. *Held*, that the sale was an abuse of the sheriff's powers, and would be set aside by a court of chancery, though a court of law would not interfere. *Reed* v. *Carter*, 1 Blackf. 410.

† See *Ennis* v. *Waller*, 3 Blackf. 472.

‡ If a purchaser of real estate at sheriff's sale refuse to pay the purchase money, and the property be sold for a less sum at a second sale, the liability of the first purchaser for the difference, under the statute of 1825, may be established by parol evidence. *Cowgill* v. *Wooden*, 2 Blackf. 332.

A sheriff sold certain real estate, on execution, to *B*, who failed to pay the purchase money. A few days afterwards, without having adjourned the sale, and without advertising it again, the sheriff re-exposed the property to sale, and sold it to *C*, who had notice of the facts. *Held*, that the sale to *C* was void. 5 Blackf. 260.

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Affidavit for ca. sa.

SECT. 433. Before any such writ shall issue, the creditor wishing to sue out the same, shall file with the officer whose duty it is to issue such writ, an affidavit charging the debtor with fraudulently concealing, removing, or conveying, or transferring his property subject to execution, with intent to defraud and delay such creditor, or charging that such debtor has money, rights, credits, or effects, with which the judgment or decree of such creditor, or some part thereof, might be paid, and which he fraudulently withholds or conceals, with the view to delay and defraud such creditor.

Last section explained.

SECT. 434. Such affidavit as above required, need not designate specifically any property, moneys, or effects, fraudulently removed, transferred, or concealed, conveyed, or withheld by such debtor; but the jury or court in determining the matters in issue between the parties, if the finding be for the creditor, shall designate in such finding, the moneys, effects, property, debts, or things in action, which have been thus removed, concealed, transferred, conveyed, or withheld, and also the value thereof.

Sci. fa. on such affidavit.

SECT. 435. Upon the filing of such affidavit, it shall be the duty of such officer to issue a scire facias, requiring such debtor to appear and show cause before the court out of which such writ against his body should issue, why the same should not issue against him.

After ten days from date of service of sci. fa., court may hear such affidavit.

SECT. 436. At any term of such court, when ten days from the service of such writ to the commencement of such term shall have intervened, or at any term of the court after the return of two several writs of scire facias, "not found," the court shall proceed to hear and determine the matters and things contained in such affidavit.

If default be made, court shall proceed to hear, &c.

SECT. 437. If such debtor shall fail to appear and show cause against the issuing of such writ, the court may proceed to hear and determine the same in the absence of such debtor; or a jury for that purpose may be empannelled, if desired by such creditor.

Trial on appearance of parties, &c.

SECT. 438. If such debtor appear and plead to such scire facias any sufficient matter to bar the issuing of such writ, and an issue to the country be taken thereon, the same may be tried by the court, by the agreement of the parties, or a jury to try the same shall be empannelled, if desired by either party.

When ca. sa. may issue.

SECT. 439. If, on any such hearing or trial, the same be determined against such debtor, such creditor shall be forthwith entitled to a writ of capias ad satisfaciendum, to be governed by the rules and restrictions contained in the next two sections.

No ca. sa. shall issue if debtor surrender his money, effects, &c.

SECT. 440. If such debtor shall surrender such moneys, effects, property, debts, or things in action, to the use and for the benefit of such creditor, or pay the value thereof, as found by such court or jury, no writ of execution shall for that cause be ordered to issue against his body.

Otherwise, the writ shall forthwith issue.

SECT. 441. If such debtor fail to surrender or pay as provided in the preceding section upon the return of such finding,

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a writ of execution shall forthwith issue against his body, upon the judgment in the case in which such affidavit was filed.

If debtor has not been held to bail, &c. capias ad respondendum may issue.

SECT. 442. If such creditor show in his said affidavit, that such debtor has not been held to special bail in the original action, or having been thus held, has been surrendered by his bail, and also that he has reason to fear, and verily does fear, that such debtor will leave the state before the trial and determination of the matters alleged in such affidavit, a writ of capias ad respondendum shall issue against such debtor, to be served and executed like such writ, in an action at law.

Debtor may give appearance bail.

SECT. 443. Such debtor, on being arrested on said writ, may enter into a recognizance, with sufficient sureties, for his appearance at the trial of such proceeding, and for the surrender of his body in execution, in case a writ of capias ad satisfaciendum be awarded against his body.

Recognizance, to whom payable.

SECT. 444. The officer making such arrest may take such recognizance payable to the judgment creditor, either before or after such debtor is committed to prison, and shall return the same to the court from which such writ issued.

Force and effect thereof.

SECT. 445. Such recognizance, when returned, shall have the force and effect of a recognizance of record, and such sureties on such recognizance, may, at any time before judgment, surrender such debtor into the custody of the proper officer in discharge of said recognizance, in like manner as provided in the case of special bail.

How far appearance bail shall be liable.

SECT. 446. A scire facias may issue on such recognizance, and judgment be rendered thereon against the persons liable thereby, in like manner as in other cases of recognizance, but the sureties therein shall only be liable for the amount of the moneys, effects, property, debts, and things in action, fraudulently withheld, concealed, conveyed, or transferred by such debtor, as found by the court or jury trying the issue on the proceedings on such affidavit.

Ca. sa. to another county, how executed.

SECT. 447. Whenever a writ of capias ad satisfaciendum shall issue, directed to any officer authorized to execute the same, in any other county than the county in which the judgment was rendered upon which such writ shall have been issued, the officer executing such writ shall commit the body of the person arrested to the jail of the county in which such arrest was made, and shall proceed thereon, in all respects, as if such writ had issued in such county, but shall make return of his doings thereon to the county from which such writ issued.

Insolvent's discharge from ca. sa.; death of debtor, etc.

Person arrested on a ca. sa. may discharge himself by giving up all his property, effects, etc., under oath.

SECT. 448. Any person arrested by virtue of a writ of capias ad satisfaciendum, while in the hands of the officer making such arrest, or being actually imprisoned in jail on such arrest, may discharge himself from custody by delivering to such officer a sufficiency of property, either real or personal, to discharge the debt or damages due on such writ, together with

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the interest and costs thereon, or by delivering to such officer all the property both real and personal of which he may be possessed, and making oath that he has no more or other property either real or personal subject to execution, and that he has no moneys, rights, credits, or effects in his possession, or under his control, or in the possession or under the control of any other person or persons for his use, and that he has, neither directly nor indirectly, disposed of, transferred, or concealed, any of his property, rights, credits, moneys, or effects, nor confessed or suffered any judgment or decree with intent to delay or defraud any of his creditors: ARTICLE 13.

Or by making oath that he has no property, &c.

SECT. 449. Or such person may discharge himself in like manner by making oath that he has no property subject to execution, either real or personal, and no rights, credits, moneys, nor effects in or under his possession or control, or in or under the possession or control of any other person or persons for his use or benefit, and that he has not, either directly or indirectly disposed of, transferred, or concealed any of his property, rights, credits, moneys, or effects, nor confessed or suffered any judgment or decree with intent to delay or defraud his creditors.

He may be taken before a judge or justice to make such oath.

SECT. 450. For the purpose of enabling any person arrested upon a capias ad satisfaciendum to take either of the oaths prescribed in the last two preceding sections, it shall be the duty of the officer making such arrest, upon the request of the person arrested, to take him before some judge of the circuit court or justice of the peace for the county within which such arrest may have been made.

Power of such judge or justice.

SECT. 451. Such judge or justice shall have full power to administer such oath, reducing the same to writing, and fully explaining it to such person, and causing the same to be signed by him; which oath so taken and signed shall be delivered to such officer, who shall make it a part of his return, appending it to the writ by virtue of which he may have made said arrest.

Officer's return.

Notice to creditor.

SECT. 452. The execution creditor shall be entitled to written notice of the time and place at which, and of the officer before whom, such oath will be taken, which notice shall be served upon such creditor, or his agent or attorney, by the officer making said arrest or his deputy, if such creditor or his agent or attorney reside in the county within which said arrest shall have been made; and if neither the creditor nor his agent or attorney reside in such county, the said officer shall post up such notice in the office of the clerk of such county for the space of ten days.

Creditor may examine such debtor.

SECT. 453. Such execution creditor, his agent, or attorney may attend at the time and place when and where such oath is to be administered and propound to the person in custody on such writ, such questions touching his property, moneys, rights, credits, and effects, as may be deemed relevant and proper by the judge or justice administering said oath; and such judge or justice shall reduce such oath and questions and answers to writing and file the same in the office of the clerk of the circuit

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court of the county in which such examination may have been made.

Persons complying with the last six sections shall be discharged from arrest.

SECT. 454. Persons arrested on any writ of capias ad satisfaciendum who may avail themselves of the provisions of the six preceding sections of this article, and bring themselves strictly within the same, shall be thereupon discharged from further imprisonment on account of such writ and the judgment on which such writ was issued.

Officer and his sureties may defend, as to such discharge, under the general issue.

SECT. 455. The officer from whose custody such person may be discharged and his sureties, if sued on his official bond, or otherwise, for an escape, may plead not guilty thereto, and give the provisions of this article, such discharge, and all just matters of defence under such plea.

Property thus delivered on ca. sa. shall be sold as in other cases.

SECT. 456. When any property has been given up as aforesaid, by any person arrested on a writ against his body, to the officer making such arrest, he shall proceed to advertise and sell the same in like manner as if it had been levied upon by virtue of an execution against such property; and a writ of venditioni exponas may issue as in other cases if necessary.

Officer's return.

SECT. 457. The officer making such arrest shall make return of all his doings therein, the discharge of such debtor, and the sale of such property according to the facts, to the court wherefrom such writ was issued.

Death of prisoner on ca. sa. shall not discharge the judgment.

SECT. 458. If any person being in custody on a writ of capias ad satisfaciendum, shall die during his arrest, such arrest or imprisonment shall not operate as a satisfaction of the judgment on which such writ issued; and the execution creditor may sue out thereafter any proper legal process, or prosecute any other legal or equitable remedy for the recovery of his judgment, interest, and costs, as if such person had never been arrested on such writ.*

If prisoner escape, fi. fa. or ca. sa. may issue.

SECT. 459. If any person taken on a writ of capias ad satisfaciendum shall escape, he may be retaken by the same or a new execution against his body, or against his property may be issued in the same manner as if his body had never been taken in execution.

Officer to pay over money, etc.; his liability; return day of execution.

Officer collecting money shall pay over within twenty days.

SECT. 460. The officer collecting any money on an execution, shall pay over the same within twenty days after the reception thereof, to the person entitled thereto, unless payment thereof shall have been enjoined.

Officer failing to levy how far liable.

SECT. 461. If any officer to whom any writ of execution shall have been delivered, shall neglect or refuse to levy upon or sell any property justly liable to execution, when the same might

* A discharge, with the plaintiff's consent, of a defendant in custody on a capias ad satisfaciendum, operates as a discharge of the judgment. Aliter, if the discharge from custody be on account of the plaintiff's non-payment of the jailer's fees. *Prentiss* v. *Hinton*, 6 Blackf. 35.

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have been done, he shall be amerced to the value of such property, not to exceed the amount necessary to satisfy such execution, and interest, and costs.

Same for failing to return the execution.

SECT. 462. If any such officer shall neglect or refuse to return any writ of execution to the court to which the same is returnable, on or before the return day thereof, he shall be amerced to the amount, with interest and costs due on such execution.

Same for failing to pay over to creditor.

SECT. 463. If any such officer shall neglect or refuse, on demand, to pay over to the execution creditor, his lawful agent or attorney, any sum or sums of money received or collected on any execution for the use of said party, such officer shall be amerced in the amount thus collected or received.

Same for failing to pay surplus to the debtor.

SECT. 464. If any such officer shall neglect or refuse to pay over and render to any execution-debtor, his lawful agent or attorney, all moneys by him received or collected on any execution against the estate of such debtor, more than sufficient to satisfy such execution, with the interests and costs thereon, such officer shall be amerced to the amount thus received or collected.*

Damages, interest, and costs recoverable under the last four sections.

SECT. 465. In all cases specified in the last four preceding sections, the person entitled to the amount of such amercement against such sheriff or other officer, shall, in addition thereto, recover at the same time legal interest and ten per centum damages on the principal sum recovered from such officer, and also his costs.

Officer may be amerced on motion.

SECT. 466. Such officer may be amerced as aforesaid before the court to which such writ of execution is returnable, upon motion in such court, ten days' previous notice of the time and place of hearing and determining such motion having been given to such officer, to appear and show cause against the same.

* If the sheriff be guilty of mal-practice in the discharge of his duty relative to an execution, the court may, upon an attachment for contempt, commit him to prison, or amerce him, and then refuse to discharge him or remit the fine, unless he make satisfaction to the judgment-creditor. *The State* v. *Tipton*, 1 Blackf. 166.

When it appears by the sheriff's return of an execution that he has levied the money, he and his sureties are liable to an action for it, without a previous demand. Ibid.

In an action against a sheriff for a false return, the execution is admissible in evidence, though it do not specify a day on which it is returnable. *Bosley* v. *Farquhar*, 2 Blackf. 61.

Neither the insolvency of the execution-defendant, nor the statute of limitations, can be pleaded in bar to an action against a sheriff for a false return of a fieri facias. *Stevens* v. *Beckes*, 3 Blackf. 88.

An execution-plaintiff cannot recover on a sheriff's bond, in the case of an escape, unless he shows a judgment against the execution-defendant. *The State* v. *Beem*, 3 Blackf. 222. See *The Governor* v. *Stribling*, 2 Blackf. 24.

Debt on sheriff's bond against the principal and his sureties. Breach, the sheriff's failure to return an execution in favor of the relator, &c. Two pleas, as follows: 1. That when the execution came to the sheriff's hands, the execution-defendant had no property within the sheriff's bailiwick, whereof to make the money, or any part of it, but was then, and still continued to be, notoriously insolvent. 2. That at the time when the execution came to the sheriff's hands, and at the time when it should have been returned, viz., on, &c. the relator had no interest in the execution, or the judgment on which the same issued, nor was he entitled to any part of the money due thereon, &c. *Held*, that these pleas were bad on general demurrer. *Held*, also, that the declaration was bad, it containing no averment of a judgment on which the execution issued. *The State* v. *Spencer*, 4 Blackf. 310.

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Judgment in such case.

SECT. 467. Unless satisfactory cause be shown to the contrary, the court shall render judgment for the full amount for which such officer has become liable.*

Injured party may proceed by suit.

SECT. 468. Instead of proceeding by notice and motion, the injured party may proceed in any such case on the bond of such officer, against him and his sureties, and shall recover according to the provisions of the preceding sections.

Executions, when returnable.

SECT. 469. All executions issuing out of any court of record shall be returnable at the expiration of one hundred and eighty days from the date thereof, unless the return day should happen on Sunday, in which case such execution shall be returned on the Monday next following.

ARTICLE XIV.

Miscellaneous provisions.

SECTION

470. Females shall not be imprisoned on mesne or final process.
471. Nor revolutionary soldier.
472. Execution debtor may deliver debt or thing in action to be sold on execution.
473. Officer shall assign the same when sold—right &c. of the debtor shall vest in the purchaser.
474. Purchaser may assign—may maintain an action thereon.
475. Such assignment by officer shall not defeat pre-existing defence.
476. The words 'debt or thing in action' defined.
477. In any suit under such assignment, how proved, &c.
478. Fi. fa. to another county.
479. Same as to fee bills, &c.

SECTION

480. Process against the body may issue and be executed on Sunday—affidavit.
481. How clerk shall endorse such process.
482. Sheriff, &c. taking bond which may need to be assigned, such assignment may be made by his successor.
483. Penalty for destroying notice of sheriff's sale, &c.
484. General power to officers to administer oaths in certain cases.
485. Defective bond taken by officer not void, &c.—action thereon.
486. Notices, &c., to whom given.
487. Execution docket.
488. Continuance of causes.

Females shall not be imprisoned on mesne or final process.

SECT. 470. No female shall be imprisoned on mesne or final process for any debt founded on contract; and if in such case there be other defendants who may be imprisoned, if on mesne process, her name may be inserted therein, but with a command to summon her to appear and answer such suit; if the writ be a capias ad satisfaciendum, her name may be inserted, and the writ may be executed on the others, but shall not be executed as to her, and the sheriff shall note the fact on the writ.

Nor revolutionary soldier.

SECT. 471. No soldier of the revolution who is enrolled on the pension list, or who has any sufficient written evidence of

*If a sheriff fail to return a capias ad satisfaciendum on or before the return day thereof, the execution-creditor may proceed against him, under the statute, by notice and motion. *Philips* v. *Vickers*, 5 Blackf. 281. See *Dawson* v. *Shaver*, 1 Blackf. 204.

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his having been such soldier, shall be imprisoned on mesne or final process for any debt or liability founded on contract; and if in any such case there be other defendants, the provisions of the last section shall apply. ARTICLE 14.

Execution-debtor may deliver debt or thing in action to be sold on execution.

SECT. 472. The execution debtor may deliver to the officer having an execution against his property, any debt or thing in action, legally or equitably assignable, to be sold by virtue of such execution; and such officer shall make sale thereof as in the case of personal property, except as to the appraisement.

Officer shall assign the same when sold.

SECT. 473. Upon such sale, the officer shall endorse on the instrument, or otherwise execute an assignment, specifying that as such officer, he sold the debt, or thing in action, to the purchaser, by virtue of an execution in favor of the plaintiff, against the defendant, naming the parties, and shall sign his name as such officer thereto, and deliver such instrument and assignment to the purchaser; and such assignment shall vest all the right, demand, and title, of the execution debtor thereto in such purchaser, as fully and completely as if the same had been assigned, transferred, and delivered to him by such debtor, at the time it was delivered to such officer to be sold as aforesaid.

Right, &c. of the debtor shall vest in the purchaser.

Purchaser may assign.

SECT. 474. Upon such assignment by the officer as aforesaid, the purchaser may assign, transfer, and deliver such debt or thing in action, as in other cases, and in his own name may maintain suit or have process for the recovery of any money or property specified in such debt or thing in action, or for the enforcement of any covenant therein contained.

May maintain an action, &c.

Such assignment by the officer shall not defeat pre-existing defence.

SECT. 475. Such assignment by such officer shall not affect any valid payment, set-off, or legal or equitable defence as against such debt or thing in action before notice of the delivery thereof to such officer to be sold, was given to the person claiming or setting up such payment, set-off, or defence.

Words "debt and thing in action" defined.

SECT. 476. The words "debt or thing in action," as used in the four previous sections, shall be deemed to include all judgments and decrees for the payment of a specific sum of money, and all mortgages, bonds, bills, and notes, and all other instruments and debts which are legally or equitably assignable.

In any suit under such assignment, how proved, &c.

SECT. 477. In declaring on any such assignment it shall not be necessary to state, recite, or show any judgment, decree, or execution by virtue of which such sale was made, nor to prove the execution of such assignment by such officer, unless the same be denied by a plea supported by affidavit.

Fi. fa. to another county.

SECT. 478. No execution against the property of an execution defendant shall be issued by any clerk of a circuit or probate court to any officer except of the county in which the judgment or decree was rendered on which execution is to issue, unless the execution plaintiff, his agent, or attorney, will make and file an affidavit with such clerk, stating that none of the execution defendants in such cause has any goods and chattels, lands and tenements in the county in which such judgment or decree is rendered, subject to execution as such plaintiff has reason to believe and verily does believe.

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Fee bills.

SECT. 479. The provisions of the previous section shall apply to all fee bills issued by any such clerk.

Process against the body may issue and be executed on Sunday. Affidavit.

SECT. 480. Mesne and final process may be isssued and executed on Sunday whenever an affidavit shall be filed by the person suing out the same, his agent, or attorney, stating in addition to any other matters which may be necessary, that he will lose his debt, claim, judgment, or decree, as he has reason to fear and believe, unless process issue on that day.

How clerk shall endorse such process.

SECT. 481. The clerk issuing such process shall endorse thereon that the person or persons therein named are not privileged from the execution of such process on Sunday; and thereupon the same may be executed on such day or any other day of the week as in other cases.

Sheriff, &c. taking bond, which may need to be assigned, such assignment may be made by his successor.

SECT. 482. When any sheriff or other officer shall take any bond of any person which by law is necessary to be assigned, transferred, or delivered to any other person for the purposes of any suit or proceeding, or otherwise, and such sheriff or other officer shall die before the assignment, transfer, or delivery thereof, his successor in office, or other officer into whose hands the same may come by virtue of any law of this state, may assign, transfer, or deliver such bond with like force and effect as if the same had been done by such original sheriff or other officer.

Penalty for destroying notice of sheriff's sale, &c.

SECT. 483. If any person shall wifully take down or deface any notice of sale of real or personal property, put up by any sheriff or other officer previous to the day of sale therein specified, without the consent of the party suing out such execution, and of the defendant therein, such person shall be deemed guilty of a misdemeanor, and shall be fined in any sum not exceeding fifty dollars.

General power to officers to administer oaths in certain cases.

SECT. 484. Every court and officer, authorized to take any recognizance of appearance, special or replevin bail, or to take any surety on any bond required of any officer for the discharge of the duties of his office, or of any party or suitor in court for the payment of any money, judgment, or decree on appeal, or otherwise, shall have power to examine on oath the person offering to become such bail or surety concerning his estate and circumstances, and his sufficiency as such bail or surety.

Defective bond taken by officer not void, &c.

SECT. 485. When any bond or recognizance shall be taken by any officer in the discharge of the duties of his office, from any person, to secure the payment of money, or the performance of any contract or duty for the benefit or use of any individual, such bond or recognizance shall not be void, nor shall the principal or surety therein be discharged from any just liability for any want of form or of the substantial matter, condition or conditions required by law, but shall be equitably bound to the

Action thereon

party interested; and such party may, by action of debt or scire facias, or by his bill in chancery, in any court of competent jurisdiction, suggest that such bond or recognizance is defective, and recover his just and equitable demand of the principal and the person or persons who were intended and included as sureties.

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ARTICLE 1.

Notices, to whom given, &c.

SECT. 486. All notices required in the progress of any suit or proceeding, or in any matter relating thereto, to be given to the adverse party, may be given to his agent or attorney at law, if either of them reside in this state, and may be served and returned by the sheriff, or officer acting as such, of the proper county; but if neither the party, his agent, nor attorney, reside in this state, such notice may be filed in the office of the clerk of the court where such suit is pending, or may be published, for three weeks successively, in some public newspaper printed in such county.*

Execution docket.

SECT. 487. The clerk of every court of record shall prepare and keep an execution docket, in which he shall docket all writs of execution as they are issued by him, specifying in proper columns, the names of the parties; against whom the judgment was rendered; the amount of the judgment, and also interest due at the issuing of the writ, and the costs; the kind of writ, and to what officer issued; and such clerk shall also prepare an additional column, in which he shall enter at length the return of such officer to such writ; and such docket entries shall be taken and deemed to be a record.

Continuance of causes.

SECT. 488. Any court for good cause shown may continue any suit or proceeding pending therein at any stage of the proceedings at the costs of the applicant, to be paid as the court shall order and direct.†

CHAPTER 41.

OF THE PROCEEDINGS IN DOMESTIC AND FOREIGN ATTACHMENT.

ARTICLE 1. Of the proceedings in domestic attachment.
ARTICLE 2. Of the proceedings in foreign attachment.

ARTICLE I.

Of the proceedings in domestic attachment.

SECTION
1. In what cases writ of domestic attachment may issue.
2. Writ not to issue if family of debtor remain, unless his absence be concealed or he be secretly removing his property, etc.
3. What shall be deemed concealing his absence by his family.

* Notice to produce papers as evidence need not be given to the party himself; if given to his attorney at law it is sufficient. *Lagow* v. *Patterson*, 1 Blackf. 327.

† If the continuance of a cause be refused, when the party is legally entitled to it, the judgment will be reversed. *Vanblaricum* v. *Ward*, 1 Blackf. 50. *Fuller* v. *The State*, Id. 63.

If the continuance of a cause be applied for on the ground that a witness who had been subpœnaed does not attend, the return of the sheriff must be produced. *Gordon* v. *Spencer*, 2 Blackf. 286.

See *Nixon* v. *Brown*, 3 Blackf. 504.

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SECTION
4. Such writ may issue on Sunday.
5. Affidavit of creditor.
6. Bond of creditor.
7. Proceedings before justice of the peace —writ, etc.
8. To what constable writ directed. Alias writs.
9. Constable shall attach property, etc., and return writ.—Lien.
10. Justice to advertise pendency of proceedings.—Hearing and trial.
11. Appeal.
12. If creditor's claim exceed justice's jurisdiction, or it is necessary to attach the land of the debtor, creditor may proceed in circuit court—writ to sheriff, etc.
13 Writs may issue from circuit court to different counties against garnishee's or debtor's property.
14. Sheriff shall levy attachment, etc.—Lien.
15. On return of writ, clerk shall docket cause.—Notice to be published in a newspaper. If no lands attached posted notices sufficient.
16. After ten days' notice, court shall hear plaintiff's claim, award execution, etc.
17. Alias writs may issue, but if returned no property found, creditor to pay costs thereof.
18. Garnishee summoned on affidavit, etc. — When to appear. — How served with process.
19. Effect of service as to garnishee's liability.
20. Garnishee may be proceeded against although no property attached.
21. If garnishee fail to appear, answer, etc., matter taken as confessed, or judgment by default entered, inquiry awarded, etc., or garnishee compelled to answer, etc.
22. Proceedings against the garnishee continued till suit ended.—Costs of garnishee.

SECTION
23. Rules as to costs in case of garnishee —garnishee, not bound to perform contract otherwise than bound to the debtor.
24. Garnishee may be held to bail on affidavit.
25. Other creditors may file and prove claims on filing bond.—May summon garnishee, etc.
26. If any creditor's claim exceed justice's jurisdiction, he shall certify cause to circuit court.
27. Writs of attachment out of circuit court shall supersede proceedings before the justice.
28. Claims filed in such case before justice, adjusted in circuit court: constable released.
29. Judgments in circuit court.
30. Court or justice to adjust claims.—Creditors, how paid.
31. Fees, how paid.
32. Powers of court and justice to enforce judgments, etc.
33. Replevin bail
34. Debtor may release his property by giving bond, etc.
35. Bond where filed.
36. Suit on such bond.
37. Debtor may appear and plead, etc., without giving bond, but his property shall not be released.
38. Extent of surety's liability under the provisions of this article.
39. Lien of consignee.
40. Right of property when claimed, how tried.
41. Goods, etc., when released to claimant.—Costs of trial of right of property.
42. Appeal in such case.
43. In case of appeal, claimant may have goods by giving bond, etc.—Suit on bond.
44. Debtor's action on creditor's bond.
45. Case in which the state, etc., may attach property of debtor without giving bond.—Proceedings.

In what cases writ of domestic attachment may issue.

SECTION 1. The real and personal property of a debtor being an inhabitant of this state, may be attached for the payment of his debts whenever such debtor shall be secretly leaving the state, or shall have left the state, with intent to defraud his creditors, or to avoid the service of civil process, or shall keep himself concealed so that process cannot be served upon him,

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with intent to delay or defraud his creditors, subject to the restrictions of the next two sections.*

Writ not to issue if family of debtor remain, unless his absence be concealed or he be secretly removing his property, &c.

SECT. 2. No writ of attachment shall issue against any debtor while the wife and family of such debtor shall be and remain bona fide settled within the county where his usual place of residence may have been prior to his absence, if such debtor shall not continue absent from the state more than one year after he shall have absented himself, unless an attempt shall be made to conceal such debtor's absence, or unless such debtor shall be secretly transferring, conveying, or removing his property or effects by which the payment of his debts may be evaded.

What shall be deemed concealing his absence by his family.

SECT. 3. If the wife or family of such debtor shall refuse to give an account of the cause of his absence, or of the place where he may be, or shall give a false account of either, or shall be unable to account for his absence or to tell where he may be found, such refusal, false account, or inability to account for his absence or to tell where he may be found shall be deemed and construed an attempt to conceal his absence within the provisions of the last section.

Such writ may issue on Sunday.

SECT. 4. Such writ may be issued on the first day of the week commonly called Sunday, and be executed on said day in like manner as on any other day, if the creditor will show in the affidavit hereinafter required that such debtor is about to abscond on such day to the injury of such creditor.

Affidavit of creditor.

SECT. 5. Before a writ of domestic attachment shall issue against the property of any absconding or concealed debtor as above provided, the creditor suing out such writ, in person or by agent or attorney, shall make and file an affidavit with the clerk of the proper circuit court, or before some justice of the peace having jurisdiction, setting forth substantially so many of the following facts and circumstances as are requisite to bring the case within the provisions of this article:

A B, of county in the state of Indiana, does solemnly swear (or affirm) that C D of said county, (or late of said county as the case may be) is justly indebted to him, the said A B, in the sum of $, as follows, to wit: (here set forth the nature of the contract by reason of which such creditor has a right to recover his debt or damages of the debtor;) and that the said C D has left (or is about secretly to leave) the state (or keeps himself so concealed that process cannot be served upon him) with intent to delay (or defraud) him, the said A B, of his said debt (or damages,) or (with intent to avoid the service of civil process.)†

* The joint share of one partner in the partnership property, may be taken under a domestic attachment for his individual debt. *Burgess* v. *Atkins*, 5 Blackf. 337.

Although the common stock of a firm be taken on an attachment against one of its members as his property, still the undivided interest of the defendant in the property may be sold under the attachment. Ibid.

† An attachment issued without an oath or affirmation first made and filed according to the statute, cannot be sustained. *Bond* v. *Patterson*, 1 Blackf. 34.

If an affidavit against two joint debtors be insufficient as to one of them, it will not

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Bond of creditor.

SECT. 6. Before a writ of attachment shall issue, the person suing out such writ, or some person in his behalf, shall also file with such clerk, or before such justice of the peace, a bond with sufficient surety, to be approved by the officer with whom the same is filed, payable to such debtor, in a penalty of double the sum demanded, with condition for the due prosecution of such writ of attachment, and the payment of all damages which may be sustained by such debtor, if the proceedings of such creditor in such writ of attachment shall be wrongful and oppressive; which bond shall be kept by the officer with whom it is filed, and delivered to such debtor when demanded.*

Proceedings before justice of the peace, writ, &c.

SECT. 7. When such affidavit and bond are properly filed before a justice of the peace, such justice of the peace is hereby authorized and required to issue a writ of domestic attachment, under his hand and seal, directed to any constable of the proper county, commanding him to seize and take into his possession the goods, chattels, rights, credits, moneys, and effects of the said defendant, that may be found in his county, and make return of the said writ and his proceedings thereon, within twenty days from the date of such writ.†

To what constable writ directed.

SECT. 8. A justice of the peace shall direct writs of attachment to a constable of the township in which such justice resides; and such constable may execute such writ on any property of the debtor which may be found in the county; and

Alias writs.

alias writs of domestic attachment may be issued by such justice as often as found necessary.

Constable shall attach property, &c., and return writ.

SECT. 9. The constable to whom said writ of attachment may be directed, shall take to his assistance one credible householder of the county, and on the discovery of any goods, chattels, rights, credits, moneys, or effects of the defendant named in said writ, shall attach and seize the same at the suit of the plaintiff; and, with the assistance of said householder, shall make an inventory of the property so attached, and the estimated value thereof, which shall be signed by the constable and the person

Lien.

assisting him, and returned with the writ; and such writ, when

authorize an attachment against the property of both. *Hamilton* v. *Knight*, 1 Blackf. 25.

In actions commenced by attachment the record must contain as particular a description of the cause of action as is required in other cases. If, however, this particular description be not inserted in the affidavit or the writ, the omission may be supplied by means of a declaration. *Harlow* v. *Bocktle*, 1 Blackf. 237. See *Bond* v. *Patterson*, 1 Blackf. 34.—*O'Brien* v. *Daniel*, 2 Blackf. 290.—*Gilly* v. *Breckenridge*, 2 Blackf. 100.

The affidavit in the case of a domestic attachment must state the county in which the debtor had recently resided. *O'Brien* v. *Daniel*, 2 Blackf. 290.

The affidavit, bond, writ of attachment, and declaration, if there be one, must appear in the record. Note 1 to *Foyles* v. *Kelso*. 1 Blackf. 215.

* If the condition of a bond in domestic attachment recite that the creditor *had* sued out the attachment, &c., parol evidence is not admissible to prove that the bond was executed *before* the issuing of the writ; but if the writ itself show that it issued *after* the execution of the bond, the recital to the contrary in the condition of the bond will be no ground for quashing the writ. *Summers* v. *Glancey*, 3 Blackf. 361. See *Love* v. *Kidwell*, 4 Blackf. 553. *Simpson* v. *Minor*, 1 Blackf. 229.

An attachment bond must be approved of by the clerk who issues the writ. His approval, however, is not conclusive, but only prima facie evidence of the sufficiency of the sureties. *Blaney* v. *Findley*, 2 Blackf. 338.

† As to the jurisdiction of justices of the peace in such case, see post Chapter 47, section 2.

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served according to the provisions of this article, shall bind the property attached from the time of service.

Justice to advertise pendency of proceedings.

SECT. 10. Such writ being returned executed, the justice shall advertise the issuing of the writ, the proceedings thereon, and the time and place at which he will proceed to hear and decide upon the claim of such creditor; which notice shall be published three weeks successively, in some newspaper printed in the county, or by written notices thereof set up the same length of time in three of the most public places in the township; and if the defendant do not appear at the day set for trial, the justice shall proceed to hear the allegations and proofs of the plaintiff, and render judgment for such sum as shall appear to be due, and award execution thereon against the property attached, or so much thereof as may be sufficient to satisfy the debt and costs.

Hearing and trial.

Appeal.

SECT. 11. All judgments rendered under this article by any justice of the peace, may be taken up by appeal to the circuit court, as in other cases.

If creditor's claim exceed justice's jurisdiction, or it be necessary to attach the land of the debtor, he may proceed in the circuit court.

Writ to sheriff, &c.

SECT. 12. Whenever the plaintiff's demand shall exceed the jurisdiction of the justice of the peace, or there shall not be sufficient goods and chattels of the defendant to satisfy the plaintiff's demand, and he may wish to proceed against the lands of the defendant, he may file his affidavit and bond, as required in this article, in the office of the clerk of the circuit court where the lands are situate; and it shall be the duty of such clerk to issue a writ of domestic attachment under the seal of the court, directed to the sheriff of the county, and commanding him to attach the lands and tenements, and seize and take into his possession the goods, chattels, rights, credits, moneys, and effects of the defendant, that may be found in his county, and make return of the writ in twenty days, together with his proceedings thereon.

Writs may issue from circuit court to different counties, against garnishees, and debtor's property.

SECT. 13. When the estate, property, or interest to be attached exists, or is situate in different counties, or when the debtors or bailees of such absconding debtor reside in different counties, the jurisdiction of the circuit court shall extend to such counties, and sundry writs of attachment, and of process against garnishees, may be issued and executed in such counties. But no judgment shall be given against the estate, property, or interest of the absconding debtor, or against such garnishees, unless the writ of attachment shall have been executed on some property, either real or personal, belonging to the absconding debtor, situate in the county where the suit was commenced, or unless process shall have been served upon some garnishee therein residing or found, by the officer executing such process.

Sheriff shall levy attachment, &c.

SECT. 14. The sheriff or other officer to whom the writ of attachment may be directed, shall proceed, with the assistance of a disinterested and credible householder of the county, to attach the lands and tenements, goods and chattels of the debtor, subject to execution at the suit of the plaintiff in such writ, and shall, with the assistance of such householder, make an inventory

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and appraisement thereof, and return the same with such writ; and such writ when so levied shall constitute a lien upon the lands, and bind the personal property from the time of service.

Lien.

On return of writ clerk shall docket cause.

SECT. 15. As soon as the writ shall have been returned executed, it shall be the duty of the clerk to docket the cause for the second day of the ensuing term of the circuit court, and forthwith make out a notice of the pendency of said writ, requiring the defendant to appear and defend, or the same will be heard and determined in his absence; which notice the plaintiff shall cause to be published four weeks successively in some public newspaper published in the county; or if there be no newspaper published therein, he shall cause such notice to be published in the paper nearest thereto; but if there be no lands attached, and if there be no paper published in the county, it shall be sufficient to publish the same by setting up written notices in three of the most public places of the county, one of which shall be at the court house door.*

Notice to be published in newspaper.

If no lands attached, posted notices sufficient.

After ten days' notice, court shall hear plaintiff's claim; award execution, &c.

SECT. 16. At the ensuing term of the court, if the defendant do not appear, upon proof that publication has been made, at least ten days before the first day of the term, the court shall proceed to hear and determine upon the claim of the plaintiff, and render judgment for the amount that appears to be due, and award execution thereon against the property attached; but if publication has not been made as required by the foregoing section, the cause shall stand continued until the next term.†

Alias writs may issue.

SECT. 17. After any writ or writs of attachment shall have been issued or returned, other writs of attachment may, at the instance of the plaintiff, be issued by force of the affidavit and bond before filed by him, at any time before the rendition of final judgment, as often as any such writ or writs may be found necessary, to the same or any other county or counties, and shall be executed and returned as writs issued in the first instance; but whenever any such writ shall be returned, and no property or effects shall have been attached thereby, the plaintiff shall pay the costs of such writ.

But if returned no property attached, creditor shall pay costs of writ.

Garnishee summoned on affidavit, &c.

SECT. 18. Whenever any creditor, or his agent or attorney, shall make and file an affidavit with the justice or clerk issuing such attachment, that he has good reason to believe that any person, naming such person, has property of any description in his possession or control belonging to the attachment defendant, which the officer cannot attach by virtue of such writ; or that such person is indebted to the defendant by decree, judgment, bond, bill, note, account, or contract, or has the control or agency of any such property, decree, judgment, bond, bill, note, account, or contract, it shall be the duty of the clerk or

* In cases of attachment it must be proved previously to the rendition of the judgment against the defendant, that he had had notice by advertisement of the pendency of the attachment, according to the statute; and the record must either state that satisfactory evidence of such notice was given to the court, or it must contain the evidence itself. *Foyles* v. *Kelso*, 1 Blackf. 215.

† If the amount of damages depends upon mere calculation, no writ of inquiry is necessary. *Henrie* v. *Sweasey*, 5 Blackf. 273.

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justice to issue his summons to such person as garnishee, notifying him to appear within five days, if issued by a justice of the peace, or at the ensuing term, if issued by a clerk of a circuit court, there to answer, under oath or affirmation, all questions that shall be put to him touching the rights, property, decrees, judgments, bonds, bills, notes, accounts, contracts, or credits of the defendant, in his hands, or within his knowledge, agency, or control; and such summons, with a copy of the original writ of attachment, and of the affidavit against the said garnishee, shall be served by leaving them with such garnishee, or at his usual place of residence.

When to appear.

How served with process.

SECT. 19. From the day of such service such garnishee shall stand and be accountable to the plaintiff in attachment for the amount of the money, property, or credits in his hands, or due and owing from him to the defendant in the attachment.*

Effect of service as to garnishee's liability.

SECT. 20. Whenever any garnishee in any proceeding in domestic or foreign attachment, fails to plead, answer, or demur to the matters set forth against him in the affidavit or any additional bill, statement, or interrogatories, or fails to appear and make discovery as required by law, such matters may be taken for confessed, or judgment by default or nil dicit, entered as the case may require; and a writ of inquiry may be awarded when necessary, and all other proceedings necessary to final judgment may be had therein; or the court may compel such garnishee to answer as aforesaid; and in either case such pleading and process shall be had thereon, according to the practice in law or equity, as the case may require, before the court or justice where the same may be pending: but no other or further special pleading shall be necessary in any proceeding in attachment before a justice of the peace, than is now required in other cases.

If garnishee fail to appear, answer, &c., matter taken as confessed, or judgment by default, inquiry awarded, &c.

Or garnishee may be compelled to answer, &c.

SECT. 21. Proceedings may be had against the garnishee in all cases where the writ of attachment is returned "no property found," in like manner as if property of the debtor had been attached by virtue of such writ.

Garnishee proceeded against alone.

SECT. 22. The proceedings instituted against such garnishee shall be continued, without any final judgment therein, until the action against the defendant in attachment be determined; and if in such suit against the defendant or the garnishee, the plaintiff be non-suited, the cause discontinued, or judgment be rendered against such plaintiff, the garnishee shall be discharged and shall recover his costs.

Proceedings against garnishee, how long continued.

Costs of garnishee.

SECT. 23. If the plaintiff recover judgment against the defendant in attachment, and the garnishee shall deliver up to the sheriff or constable, before judgment had against him, or shall produce and deliver an inventory of all the goods and chattels or other effects in his possession, and shall pay to such officer, or to the justice, or into court, all moneys due from him, or belonging, to the said defendant, then the costs which shall have accrued on such proceedings against such garnishee, shall be paid out of the proceeds of the property attached, and be-

Rules as to costs in case of garnishee.

* See *Evans* v. *Darlington*, 5 Blackf. 320.—*West* v. *McCarty*, 4 Blackf. 244.

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longing to the defendant: but if the garnishee shall not appear, or if appearing shall refuse truly to confess the matters alleged, and on trial the plaintiff shall recover judgment against him, or if he admit that he has moneys, credits, or effects, belonging to the defendant, in his hands, and shall fail or refuse to pay or deliver the same, as above in this section provided, he shall pay costs; but no garnishee shall in any case be compelled to pay or to perform any contract or duty to or for any plaintiff in attachment, in any other way or manner, or at any other time, than he would be lawfully bound to do for the defendant in attachment.

Garnishee not bound to perform contract, &c. otherwise than bound to the debtor.

Garnishee may be held to bail on affidavit.

SECT. 24. If any plaintiff, his agent, or attorney, will make oath or affirmation before the clerk or justice issuing the writ of attachment, that he is afraid that said garnishee will abscond before judgment can be had, and that he verily believes that such garnishee has moneys, things in action, goods, chattels, or effects of the said defendant in his possession, or is indebted to the said defendant, such clerk or justice shall issue a capias ad respondendum against the said garnishee, and hold him to bail thereon, as in a civil action.

Other creditors file and prove claims on filing bond.

May summon garnishee, &c.

SECT. 25. Each and every creditor of the defendant, upon making and filing his affidavit and bond, as is herein required of the attaching creditor, may, at any time before the final adjustment of the suit, be permitted to file and prove his claim or demand against the defendant, and may also have any person summoned as a garnishee, or held to bail as aforesaid, who has not before been summoned or held to bail, and may propound interrogatories to garnishees, and enforce answers thereto, as may be done by the creditor who is the plaintiff.*

If any creditor's claim exceed justice's jurisdiction, he shall certify cause to circuit court.

SECT. 26. If, upon trial before a justice of the peace, the sum proved by any one creditor shall exceed the justice's jurisdiction, such justice shall forthwith certify and transmit his proceedings, with all the papers filed before him and belonging to the cause, to the clerk of the circuit court of the proper county, who shall file the same, and docket the cause for trial at the next term; and the court shall proceed therein in the same manner as if the writ had originally issued from said court.

Writs of attachment out of the circuit court shall supersede proceeding before the justice.

Duty of sheriff.

SECT. 27. All writs of attachment issued by the circuit court shall supersede proceedings under attachment issued by a justice of the peace, undetermined at the time of serving such writ; and the officer executing the writ issued by the circuit court, may take into his possession any property of the same defendant attached by a constable under a writ from a justice of the peace; and upon his taking such property into his possession, it shall be his duty to serve the justice with a copy of the writ issued by the court; and the justice shall thereupon transmit to the clerk of the said court a certified copy of his proceedings,

* When a creditor comes in during the pendency of an attachment commenced by another, to obtain a judgment under the statute, his claim must be set forth with the same certainty that, in any other action, is required in a declaration. *Gilly* v. *Breckenridge*, 2 Blackf. 100.

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and the original papers filed before him appertaining to the cause. ARTICLE 1.

SECT. 28. The circuit court shall proceed to the final adjudication of the several claims filed before the justice and proceedings against garnishees, in the same manner as if they had been originally filed in said court, and tax up the legal costs that accrued before said justice, which shall be paid as the other costs are paid; and the constable shall be released from all liability when the property is taken from his possession as aforesaid by virtue of a writ of attachment from the circuit court. Claims filed before the justice adjusted in the circuit court. Constable released.

SECT. 29. If the plaintiff or creditors shall make sufficient proof of the debts due him or them from such defendant, and also of the goods, chattels, rights, credits, moneys, and effects, in the possession of the garnishees, the court or justice shall proceed to give judgment thereon in favor of the plaintiff or creditors, either against the garnishee or the property and effects of the defendant, or both, as the case may require. Judgments in circuit court.

SECT. 30. Whenever judgment is rendered against a garnishee, execution shall issue thereon, as in the case of other judgments, and where judgment is rendered against the property attached, the same shall be sold by virtue of a writ of venditioni exponas issued by order of the court or justice on such judgment; and as the money is realized, the same, under the order and direction of the court or justice, after paying all costs and charges, shall be paid to the several creditors in proportion to the amount of their several claims as adjusted.* Judgment, how rendered. Creditors, how paid.

SECT. 31. In all cases arising under the provisions of this article, the usual fees shall be allowed, taxed, and paid out of the proceeds arising from the sale of the property attached or recovered from the garnishees; and whenever such proceeds are insufficient to pay and satisfy the legal costs of the proceedings in attachment, such costs, or the balance remaining unpaid, shall be paid by the plaintiff and other attaching creditors, in proportion to their several demands, as adjusted by the court or justice as aforesaid. Fees. How paid.

SECT. 32. In all proceedings in domestic attachment, the court or justice may make, enforce, and cause all proper interlocutory and final orders and judgments to be executed as effectually as in other proceedings in law or equity, and in such manner as the case may require, not inconsistent with the provisions of law. Powers of court and justice to enforce judgments, &c.

* If the defendant in attachment do not appear and put in bail, a judgment against him may be good, without his having been previously called, and his default entered. *Harlow* v. *Becktle*, 1 Blackf. 237.

Upon a judgment in attachment, the usual order of the court is, that so much of the property attached be sold as will satisfy the judgment: but an order for the sale of all the property is not erroneous, unless it be apparent to the court making it that injustice would be done. Ibid.

In the process by attachment, the proceedings are against the property only of the defendant, and where execution is awarded, it issues against the property attached, and nothing else. If it pays the debt, it is well; if not, the original debt, so far as it remains unpaid, continues. *Henrie* v. *Sweasey*, 5 Blackf. 335.

The judgment in such case, if the defendant did not appear, cannot be made the foundation of a suit. Ibid.

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Replevin bail.

SECT. 33. Stay of execution on judgments rendered under the provisions of this article, shall be had, subject to the same provisions of law as in cases of other judgments.

Debtor may release his property by giving bond, &c.

SECT. 34. Such debtor may have his property, or any part thereof, which may have been attached, released and delivered to him, if he require it, on his executing and delivering to the officer attaching such property a bond, payable to the state of Indiana, in a penalty of at least double the value of such property, with sufficient surety, to be taken and approved by such officer, and with condition for the proper care and keeping of such property, and for its re-delivery on demand, or so much thereof as may be required to be sold on execution on the judgment or judgments which may be recovered against him in such proceedings in attachment.

Bond, where filed.

SECT. 35. The officer taking such bond shall file the same in the court, or with the justice before whom such writ of attachment is pending.

Suit on such bond.

SECT. 36. In case of a forfeiture of any of the conditions of the bond, the creditors, jointly, or any one or more of them, may maintain an action thereon, in the name of the state of Indiana, on their relation, and may recover judgment for the damages sustained, not to exceed the amount of the original judgment and costs thereon, nor the value of such property, and also ten per centum damages on the amount thus recovered.

Debtor may appear and plead, &c. without bond, but his property shall not be released.

SECT. 37. The attachment debtor may appear and plead to such writ, and defend against the same and all claims filed under such writ, as of course, without filing bond, in like manner as if suit had been commenced by summons or capias on the cause of action specified in the plaintiff's affidavit, or such creditor's claim; but no such appearance or pleading shall operate to discharge the property attached, unless bond be filed as required in the foregoing thirty-fourth section, or judgment be rendered in favor of such debtor.

Damages from surety.

SECT. 38. No more shall be recovered in an action on any recognizance or bond given according to the requirements of the twenty-fourth and thirty-fourth sections of this chapter than the true cash value of the defendant's interest in the lands, tenements, goods and chattels, rights, credits, moneys, and effects, which may have been attached, and liable to be applied to the benefit and use of the creditor or creditors in said writ of attachment.

Lien of consignee.

SECT. 39. If goods be attached in the hands of a consignee, he shall have a lien on such goods for any debt due to him from the consignor, in preference to any plaintiff or creditor.

Right of property, how tried.

SECT. 40. Whenever any person other than the defendant may claim any personal property, attached under the provisions of this article, the officer attaching the same shall, previous to any further proceeding on such writ, cause the right of property to be tried, as in cases of property taken in execution, and the officer shall give such claimant reasonable time to procure testimony to substantiate his said claim.

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SECT. 41. If the right of property be found in such claimant, the officer shall forthwith release from his custody such property, and the plaintiff shall pay the costs of such trial; but if the right of property be found in the defendant in such writ of attachment, the claimant shall pay the costs; and it shall be the duty of the justice who issued the attachment, or of the circuit court before which the writ is returnable, to tax such costs.

Goods, &c. when released to claimant.

Costs of trial of right of property.

SECT. 42. Any person aggrieved by the decision of the court, or justice of the peace, or of the jury deciding any case specified in the last two preceding sections, may appeal therefrom, or prosecute a writ of error, as the case may require, as in other actions.

Appeal, &c.

SECT. 43. In all cases where such appeal shall be taken, the person or persons claiming such property, and in whose possession it may be, shall be at liberty, upon giving bond and sufficient surety in a reasonable sum, to be approved by the officer serving the attachment, to hold such property until such appeal shall be determined; and on failure to deliver such property, agreeably to the true intent and meaning of such bond, the said bond may be put in suit by the plaintiff in attachment, who shall recover thereon all damages by him sustained.

In case of appeal, claimant may have goods by giving bond, &c.

Suit on bond.

SECT. 44. Every attachment-defendant aggrieved by the issuing of any writ of domestic attachment, or by the proceedings in the case of any claim filed under such writ, shall be entitled to an action on the bond of any creditor, filed as herein provided, by whom he shall have been aggrieved or injured; and if it appear that the proceedings had by any such creditor against the defendant were wrongful and oppressive, such defendant shall recover damages at the discretion of the jury.*

Debtor's action on creditor's bond.

SECT. 45. In all suits in the name and for the use of the state of Indiana, or in the name of any officer, or of any person as trustee of the state, and for the use of the state, if the process issued be returned that any defendant in such process is not found, the attorney prosecuting any such suit, if he deem it advisable, may have a writ of domestic attachment issued against the goods, chattels, lands, and tenements, rights, credits, and effects of such absent defendant, to answer the demand for which such suit is brought, without making any affidavit or giving and filing any bond; and such writ of attachment when so issued shall be served and prosecuted to final judgment, according to the provisions of this article.

Case in which the state, &c. may attach property of debtor without giving bond.

Proceedings.

*It was stated in the condition of an attachment bond, that the attachment had issued, and the condition was set out in the declaration on the bond. *Held*, on general demurrer, that a plea denying that the attachment had issued was inadmissible. *Love* v. *Kidwell*, 4 Blackf. 553.

As to the declaration on an attachment bond, see the above cited case, and also *Morris* v. *Price*, 2 Blackf. 457. As to damages, see the last cited case. As to an action against officers and others issuing or acting under a writ of attachment, see *Barkeloo* v. *Randall*, 4 Blackf. 476—*Butler* v. *Borders*, 6 Blackf. 160.

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ARTICLE II.

Of the proceedings in foreign attachment.

SECTION
46. Property liable to foreign attachment.
47. Jurisdiction of circuit court—sundry writs may issue.
48. Liability of partners, joint owners, etc.—non-resident heirs, executors, etc.
49. Affidavit of claim—bond.
50. Service of writ.
51. Pendency of writ published.
52. Cause continued—how claims adjusted.
53. Property expensive to keep or perishable may be sold.
54. Other creditors may file claims.
55. Creditor, before receiving amount of his claim, shall give bond to answer suit brought within twelve months.

SECTION
56. Garnishee.
57. Justices' jurisdiction.
58. Duties of justice—constable.
59. Proceedings before justices.
60. Continued six months by justice.
61. If debtor appear, justice to notify creditor.
62. Debtor's property released on filing bond, etc.
63. Appeal from decision of justice.
64. If claim exceed $100, justice shall file papers in circuit court.—Proceedings therein.
65. Suit on debtor's bond.

Property liable to foreign attachment.

SECT. 46. The lands, tenements, hereditaments, goods, chattels, rights, credits, moneys, and effects of any and all persons not residents of this state, are and shall be liable for the payment of debts or other demands, by suit to be instituted by process of foreign attachment, to be issued from the circuit court having jurisdiction of the subject matter.*

Jurisdiction of circuit court.

SECT. 47. When the estate, property, or interest to be attached, exists or is situate in different counties, the jurisdiction of the circuit court shall extend to such counties, and sundry writs may be issued to and executed in such counties, and alias writs may issue to the same or other counties.

Sundry writs may issue.

Liability of partners, joint owners, &c.

SECT. 48. The joint and several estates, property, and interest of joint owners, either as partners or otherwise, shall be liable as aforesaid by suit against all or any of them who may be indebted, by their proper names, or the names by which they may be known and reputed, or by the partnership name or style; and the estates, property, and interest which may have descended to non-resident heirs or devisees, or become vested in the non-resident executor or administrator of decedents, shall be liable in like manner for debts or other demands against said decedent's estates; but the property, estate, or interest of any one or more joint owners who shall not be indebted, shall not be affected by the proceedings authorized by this article against joint owners who may be indebted.†

Non-resident heirs, executors &c.

* When the property of a debtor is liable to seizure by foreign attachment for a debt, the remedy of his creditor is not in chancery but at law. *Latham* v. *Barlow*, 6 Blackf. 97. See *Kipper* v. *Glancey*, 2 Blackf. 356.

† An affidavit for a foreign attachment against the heirs of a judgment debtor, must state the names of the defendants and expressly aver them to be non-residents: if the

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ARTICLE 2.

SECT. 49. Writs of foreign attachment shall be made returnable to the first day of the next term of the court; but before any writ shall issue, the nature of the debt or demand, and the sum claimed shall be proved by oath or affirmation to be justly due and owing, and that the defendant, whether the original debtor or whether sued in a representative capacity, is not, as the person making the oath or affirmation verily believes, at the time a resident of this state; and bond shall be given as in cases of domestic attachment, with surety to be approved of by the clerk of the court issuing the writ; and said oath or affirmation and bond shall be filed in the office of such clerk.* Affidavit of claim. Bond.

SECT. 50. The officer serving such writ shall proceed in the same manner, and be subject to the same responsibilities as are prescribed in cases of domestic attachment. Service of writ.

SECT. 51. Within twenty days after the return day of the writ, if such writ be returned executed, the clerk shall make out a notice of the pendency of such writ; which notice shall be forthwith published for three weeks successively in a newspaper printed in the county in which such suit shall be pending or if no newspaper be there published, then in the county most convenient thereto; and proof of such publication shall be made at the next term of the court. Pendency of writ published.

SECT. 52. Such suit shall be continued from such next term until the next following term before the court shall proceed to adjudicate thereon, and their proceedings in such adjudication to final judgment, shall then be similar in all respects to the proceedings in domestic attachment, except where otherwise herein directed.† Cause continued. How claims adjusted.

SECT. 53. The court may direct the sale of personal property of a perishable nature, or the keeping of which is expensive, seized under such writ of attachment, to be made by the sheriff at public auction upon reasonable notice, and the money arising from such sale shall be deposited with the clerk, subject to the order of the court upon final judgment; and in all cases where any property is attached that is liable to immediate da- Property expensive to keep or perishable, may be sold.

affidavit state the heirs to be "*A* and others unknown, who are not all residents in the state of Indiana," it is insufficient. *Powers* v. *Hurst*, 3 Blackf 229.

The affidavit in such case, if no declaration be filed, must show that there is no executor, nor administrator, nor personal assets to discharge the debt. Ibid.

But see *Reed* v. *The Bank of Kentucky*, 5 Blackf. 227.

*The affidavit, bond, writ of attachment, and declaration, if there be one, should be inserted in the record.—See *Cousins* v. *Brashier*, 1 Blackf. 65, and notes 1 and 2 Ib. —The affidavit and bond must be filed before issuing the writ. Ibid:

A writ of attachment ought not to issue for a larger sum than that sworn to, but it may issue for a less sum. *Reed* v. *The Bank of Kentucky*, 5 Blackf. 227.—*Henrie* v. *Sweasy*, 5 Blackf. 273.

An affidavit in foreign attachment is not objectionable because the facts contained in it seem to show that the plaintiff is entitled to a larger sum than he claims. *Henrie* v. *Sweasy*, 5 Blackf. 273.

The plaintiff in such suit cannot have judgment for a greater sum than he demands by his affidavit, with interest, if the debt be such as to carry interest. Ibid.

†If the amount of damages in foreign attachment depends upon mere calculation, no writ of inquiry is necessary. *Henrie* v. *Sweasy* 5 Blackf. 273.

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mage, it shall be lawful for the officer attaching the same to make sale thereof, by giving ten days' notice, and he shall deposite the proceeds with the clerk as aforesaid.

Other creditors may file claims &c.

SECT. 54. Creditors other than the plaintiff shall be permitted to file and prove their claims by filing the affidavit and bond as required in this article to be done by the creditor suing out the writ in the first instance.

Creditor before receiving amount of his claim shall give bond to answer suit brought within twelve months, &c.

SECT. 55. No creditor or plaintiff who may have prosecuted a claim under the provisions of this article and obtained judgment therefor in the absence of the defendant, shall receive the amount of such judgment or any share thereof, until he first give bond with surety to be approved of by the court or clerk, in double the value to be received, payable to the defendant, conditioned that the creditor receiving the same shall appear and answer to any suit which such defendant may bring against him within twelve months thence next ensuing, and to pay such defendant all sums of money which, on trial to be had thereon, shall appear to have been received by such creditor, and which was not justly due and owing to him, together with all interest and costs of suit.

Garnishee.

SECT. 56. It shall be lawful for any plaintiff in foreign attachment, or creditor of the defendant, to summon as garnishee any person who may have any goods, chattels, rights, credits, moneys, or effects in his hands belonging to such absent defendant, or to the estate on account of which he is sued; or to summon any person who may be indebted in any manner whatsoever to such absent defendant, or to the estate on account of which he is sued, in the same manner and subject to the same rules and restrictions as are prescribed in proceedings by domestic attachment, and the parties and the court shall be governed by like rules in all respects where the same are not repugnant to this article.

Justice's jurisdiction.

SECT. 57. Justices of the peace shall have concurrent jurisdiction with the circuit courts in all cases of foreign attachment where no real property shall be attached and where the plaintiff's demand shall not exceed the sum of one hundred dollars.*

Duties of justices.

SECT. 58. In all cases instituted before justices of the peace under the provisions of this article, the powers, authority, incidents, and duties appertaining and belonging to clerks and circuit courts by the provisions of this article, shall appertain and belong to such justices of the peace; and the powers, authority, incidents, and duties appertaining to sheriffs and coroners, by the provisions of this article, shall appertain to the constable whose duty it may be to serve civil process in other cases issued by justices of the peace, subject to the provisions of this article.

Constable.

Proceedings before justices.

SECT. 59. All cases of foreign attachment before justices of the peace shall be governed by and subject to the provisions prescribed for such cases in circuit courts, so far as the same are applicable, and not repugnant to the provisions of this article.

* See post Chapter 47, section 2.

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ARTICLE 2.

SECT. 60. After publication, made by order of the justice, as is required in proceedings under this article in a circuit court, each cause of foreign attachment shall, before the justice shall proceed to final judgment, be continued for not less than six months, nor more than seven months. Continued six months by justice, &c.

SECT. 61. On the appearance and application of the defendant at any time before final judgment, the justice shall cause the plaintiff or plaintiffs, claimant or claimants, his or their agent or attorney, if to be found within the county, to have at least three days' notice of the day of trial, on which day, unless good cause of continuance be shown, as provided in other cases before justices of the peace, such justice shall proceed to try said cause and to render judgment as in other civil cases before him. If debtor appear, justice to notify creditor.

SECT. 62. If such defendant or defendants, or any other person in his or their behalf, shall, at any time before final judgment, enter into bond with good surety, to be approved of by the justice, payable to the state of Indiana, in double the amount of the claims filed, conditioned for delivering in execution the property attached in as good plight as it may then be, should said judgment be rendered against him or them, then such property shall be re-delivered to the defendant or defendants, or other person, as the case may be. Debtor's property released on filing bond.

SECT. 63. An appeal shall lie from any judgment rendered by a justice under this article, in the time and manner provided in other actions, and the appeal bond shall be payable to the state of Indiana. Appeal from decision of justice.

SECT. 64. Whenever any claim filed shall exceed the sum of one hundred dollars, or whenever the plaintiff may wish to attach real property of the defendant or defendants, the justice shall file a transcript of his proceedings with the clerk of the circuit court of his county, and the same proceedings shall be thereupon had as if the cause had been originally commenced in such court, and further proceedings thereon before said justice shall be stayed, and any property which may have been attached by any constable, shall be delivered on the writ of attachment issued by the clerk of the circuit court. If claim exceed one hundred dollars, justice shall file papers in circuit court. Proceedings thereon.

SECT. 65. Separate suits may be brought on any bond mentioned in this article, in the name of the state of Indiana, for the use of any person or persons entitled to any demand or claim filed or sued for, in the cause in which said bond was filed. Suit on debtor's bond.

CHAPTER 42.

OF ENFORCING THE LIENS OF MECHANICS AND OTHERS IN CERTAIN CASES.

ARTICLE 1. Of the liens of mechanics and others on buildings.
ARTICLE 2. Of liens upon boats and other vessels for construction, repairs, and supplies.
ARTICLE 3. Of liens of artizans, mechanics, tradesmen, and bailees, in certain cases.

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ARTICLE I.

Of the liens of mechanics and others on buildings.

SECTION
1. Mechanics, &c. may have lien.
2. Lien enforced only against the owner.
3. Remedy of sub-contractor, &c.
4. Set-off in favor of owner, &c.
5. Notice of lien to be recorded.
6. How lien enforced.
7. Who may join in the bill.
8. Answers, how and when filed.
9. Cross bill not necessary.
10. Trial, continuance, filing answers, &c. after a default.
11. Proof of claims, when made.
12. Issue and jury: sale decreed: payment of claims.
13. Interest.
14. Surplus paid to owner.
15. Defendant may release his property by giving bond, &c.

Mechanics, &c. may have lien, &c.

SECTION 1. Carpenters, joiners, brick and stone masons, plasterers, turners, painters, brick makers, lumber merchants, and all others performing labor, or furnishing materials for the construction or repair of any building, shall and may have a lien separately or jointly upon the building or buildings which they may have constructed or repaired, or for which they may have furnished materials of any description, to the extent of the value of any labor done, or materials furnished, or for both, where the amount shall exceed thirty dollars.

Lien enforced only against the owner.

SECT. 2. The provisions of this article shall only extend to work done or materials furnished on new buildings, or to a contract entered into with the owner of any building for repairs, and not to any contract made with the tenant.

Remedy of sub-contractor, journeyman, &c.

SECT. 3. Any sub-contractor, journeyman, or laborer, who may be employed in the construction or repairing of any building, or in furnishing any materials for the same, may give to the owner or owners of the building or buildings on which he may have worked, notice in writing, particularly setting forth the amount of his claim, and the service rendered for which his employer is indebted to him, and that he holds said owner responsible for the same; and the owner of the building is hereby made liable for the amount so claimed, if indebted to the employer to the amount; if not, then to the amount due from him to said employer at the time such notice was served, which may be recovered in an action of assumpsit.

Set-off in favor of owner, &c.

SECT. 4. When any laborer, journeyman, or sub-contractor shall acquire any such lien, the same may be set off by the owner of the building, or other person liable for the payment of the erection or repair thereof in any action brought against him by the person who otherwise is entitled to recover the same under the contract.

Notice to be recorded.

SECT. 5. Any person wishing to avail himself of the provisions of this article, whether his claim be due or not, shall file in the recorder's office of the county, at any time before the expiration of sixty days after the completion of the building or repairs in this article specified, notice of his intention to hold a lien upon the property declared by this article liable to such

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lien, for the amount due or to become due to him, specifically setting forth the amount claimed; and the recorder is hereby required to record such notice as soon as presented, for which he shall be entitled to receive twenty-five cents.

How lien enforced.

SECT. 6. Any person or persons having a lien under this article, may enforce the same by filing a bill in chancery in the circuit court of the county where the work was done, or materials furnished, at any time within one year from the completion of the work, or furnishing the materials, or if a credit be given, from the expiration of such credit.

Who may join in the bill.

SECT. 7. All the persons having a lien, may join in the bill against the employer, or one or more of them may file a bill against the employer, or one or more of them may file a bill against the employer and the other persons having a lien; each claim shall be clearly and distinctly stated, and as clear and distinct an answer shall be made to the same.

Answer.

Answers, how and when filed.

SECT. 8. Immediately on the service of process in any suit instituted under the provisions of this article, any defendant or defendants shall have the right to file with the clerk of the county where suit has been instituted, his or their answer under oath; and the clerk shall endorse thereon the time of filing the same, and ten days shall be allowed the defendant or defendants to file their answers after the service of process.

Cross bill not necessary.

SECT. 9. It shall not be necessary for a defendant claiming a lien or relief against any complainant or co-defendant to make his answer a cross bill against the complainant or any co-defendants; but the assertion of his claim and lien in his answer, with a prayer for the appropriate or general relief, shall be sufficient to authorize the court to enter the proper decree for relief against any of the complainants or defendants.

Trial.

SECT. 10. If process has been served ten days, the cause shall stand for trial at the first term thereafter; if not, then at the first subsequent term, unless the parties agree to go into trial at the previous term.

Continuance and default.

The court may, for good cause shown, permit a continuance of any or all the claims in controversy, and the defendant or defendants, after default, may file his or their answers, at any time before the trial of the cause, on such terms as the court may deem equitable.

Proof of claims when made.

SECT. 11. Any person claiming a lien, at any term after process shall have been served ten days on the person whose property is liable to such lien, may proceed to the proof of his claim; and if such person be a defendant to the bill in such case, he may proceed to such proof immediately on filing his answer, if process have been served ten days before the term, as above required.

Issue and jury.

SECT. 12. The court, on application of either party, may direct an issue to be made, and a jury called to try the same, as in cases at law; and when the claims of the parties entitled to recover shall be ascertained, the court shall render a decree for the amount of each claim, respectively, against the owner of the building, and direct the house, and interest of the em-

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ployer in the lot, to be sold on a credit of not exceeding six months, the payments to be made in such instalments as the court may direct, taking into consideration the interests of the parties; and the officer collecting the proceeds of such sale shall pay over the same to the persons entitled thereto, respectively, under the direction and order of the court.

Sale decreed.

Payment of claims.

Interest allowed.

SECT. 13. The amount due the claimants shall bear legal interest from the time the same shall have become due by the contract of the parties, and the purchaser of the property shall pay interest on the purchase money from the time of the sale.

Surplus paid to owner.

SECT. 14. The court, after all the claimants have been paid, shall direct the surplus, if any, to be paid over to the owner of the property; and should the proceeds of the sale be insufficient to pay all the claimants, then the court shall order them to be paid in proportion to the amount respectively due to each.

Defendant may release his property by giving bond, &c.

SECT. 15. In all proceedings commenced under this article, the defendant may file a bond, with surety to be approved by the court, conditioned for the payment of the amount which may be found due, in payments, the longest of which shall not exceed six months, as the court may order, and release his property from the lien hereby created.

ARTICLE II.

Of liens upon boats and other vessels for construction, repairs, and supplies.

SECTION

16. Lien on boats and vessels.
17. Attachment.
18. Creditors may join, &c.; judgment and execution.
19. Justice may certify cause to circuit court if demand exceed his jurisdiction.
20. Boat or vessel released if bond be given, &c.
21. Lien in case of articles furnished after vessel has started on her voyage, &c.

SECTION

22. Process, how served in certain cases.
23. Lien of laborers, &c., if enforced, shall be a set-off, &c.
24. Penalty for resisting service of attachment.
25. Action for penalty.
26. Boatmen and mariners.
27. If freight not delivered, &c., owner or consignee may proceed under this article.

Lien on boats and vessels.

SECT. 16. Boats and vessels of all descriptions, built, repaired, or equipped within the jurisdiction of this state, and all boats and other vessels built, repaired, or equipped by citizens of this state, without the jurisdiction thereof, which shall afterwards come within such jurisdiction, shall be liable for all debts contracted by the master, owner, or consignee thereof, on account of work done and supplies or materials furnished by tradesmen, mechanics, or others, for, on account of, or towards the building, repairing, fitting, furnishing, or equipping such boats or vessels; and the debts so contracted shall be a lien on such boats

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or vessels, their tackle, apparel, and furniture; and shall have preference to any and all debts due from the owners, masters, or consignees thereof, except mariners' and boatmen's wages.

Attachment.

SECT. 17. If the person having such demand against such boat or vessel, shall file a statement of his claim, annexing thereto an affidavit that such claim is justly due and owing, with any justice of the peace of any county in which such boat may be, if such demand do not exceed one hundred dollars, or with the clerk of the circuit court of such county, he may have a warrant of attachment issued by such justice or clerk, directing the seizure and detention of such boat or vessel, and the tackle, apparel, and furniture thereof, by the sheriff or constable to whom such writ may be directed, until the final determination of the proceedings under such attachment, and until payment be made of such demand, if judgment be rendered in favor of such claimant; and such attachment shall be returned before such justice, or to the office of such clerk, forthwith after the service thereof.

Return of writ.

Creditors may join, &c.

SECT. 18. Upon the return of such warrant, all or any of the persons having demands of the decription before mentioned, may join in a declaration against such boat or vessel, briefly setting forth their demands for work done or materials furnished, and whether at the request of the owner, master, or consignee of such boat or vessel, and averring demand and refusal of payment, to which declaration shall be annexed the particulars of the demand; and proceedings shall be had and judgment rendered as in other cases; and upon such judgment execution may issue, and such boat or vessel, and tackle, apparel, and furniture, or so much thereof as shall be necessary, may be sold under such execution.*

Judgment and execution.

Justice may certify cause to circuit court, if demand exceed his jurisdiction.

SECT. 19. If in any case all the demands exhibited before any justice of the peace upon any such warrant returned before him, shall exceed the extent of his jurisdiction, he shall certify the proceedings to the circuit court of his county, where the same shall be conducted as if originally commenced in said court.

Boat or vessel released if bond be given, &c.

SECT. 20. If the master, owner, or consignee shall, before final judgment, give bond and surety to be approved of by the clerk or justice who may have issued such warrant, conditioned to satisfy and pay all the demands pending against such boat or vessel, which shall be adjudged to be due and owing, on the determination of such cause, or if he then pay the said demands, together with the costs of the proceedings, such boat or vessel shall thereupon be discharged from such arrest and detention.

Lien in case of articles furnished after boat has started on her voyage, &c.

SECT. 21. After a boat or vessel of any description shall have started on her voyage, if any person shall sell to the captain, commandant, master, consignee, or any officer of said boat or vessel, materials for her repair or equipment, or wood or coal for fuel, or provisions to be made use of by the crew or passengers during said voyage, or any articles not being freight or

* See *The Steamboat Tom Bowling* v. *Hough*, 5 Blackf. 188.

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cargo, and which are designed merely to enable said boat or vessel to prosecute her voyage from port to port, said person making affidavit of the truth and justice of his demand, shall have the same remedy and obtain judgment and have execution in the same manner as above provided by the provisions of this article.

Process, how served in certain cases.

SECT. 22. It shall not be necessary to serve the process upon the officer or consignee with whom the contract was made, in order to obtain judgment, in cases arising under this article, if due diligence has been used by the officer having the process, to execute the same on such officer or consignee, without being able to effect it; but in such case, service upon the clerk, or any other officer of said boat if said clerk cannot be found, or in case that cannot be done, service by a copy left or affixed in some place in said boat or vessel, easy to be seen, shall be sufficient service to authorize judgment.

Lien of laborers, &c., if enforced, shall be a set-off, &c.

SECT. 23. When any person having a lien upon any boat or vessel is a journeyman, laborerer, or sub-contractor, and he shall enforce his lien and recover therefor, such recovery shall bar and discharge so much of the lien which any person employing such laborer, journeyman, or sub-contractor might otherwise have had on such boat or vessel.

Penalty for resisting service of attachment.

SECT. 24. If any person shall prevent, resist, or obstruct the execution of any process contemplated by the provisions of this article, or shall prevent, obstruct, or resist any process which may be served or attempted to be served on any boat or vessel, or water craft, or any officer or persons who may be aboard such boat, vessel, or water craft, said person shall be liable in an action of debt to any person who will sue for the same in one year from the time such cause of action shall accrue.

Action for penalty.

SECT. 25. Such action may be brought before any justice of the peace in any township and county in the state where the person or persons so offending may be found; and the person who shall thus sue shall not recover less, if judgment be obtained in his favor, before a justice of the peace, than ten dollars nor more than one hundred dollars; and if he sue in the circuit court, not less than ten dollars nor more than five hundred dollars, together with costs of suit.

Boatmen and mariners.

SECT. 26. Boatmen and mariners, for their wages, may proceed under the provisions of this article, and shall be entitled to all the benefits thereof.

If freight not delivered, the owner may proceed under this article.

SECT. 27. Whenever any steamboat or other vessel, having on board freight to be delivered at any landing place in this state, shall attempt to pass the place of delivery without delivering such freight, the owner or consignee thereof may sue out an attachment against said steamboat or other vessel, and compel the delivery of said freight; or in case of passing said port of destination in the night, and failing to give notice to said owners or consignees to receive said freight, and waiting a reasonable time for the delivering of the same, such attempt or failure shall be taken and deemed to be a debt against said boat,

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her captain and owners, and be placed upon the same footing with the debts specified in the first section of this article, and the value of said freight at the place of delivery, and reasonable damages to the owner or owners, may be recovered as in this article above provided. ARTICLE 3.

ARTICLE III.

Of liens of artizans, mechanics, tradesmen, and bailees, in certain cases.

SECTION		SECTION	
28.	Lien of artizan, &c. in case of failure to pay, &c., how enforced: may sell, &c.	33.	Same shall be loaned, &c.
29.	Same in case of repairs.	34.	Lien in case of bailee, keeper, &c., how satisfied.
30.	Sale to be by auction.	35.	As to cattle, hogs, &c.
31.	Notice of sale.	36.	Additional compensation in such cases, how paid.
32.	Surplus paid into county treasury if owner absent.	37.	Copies of notice, &c. verified by oath, to be filed: effect in evidence.

SECT. 28. Whenever any person shall leave with or put into the hands of any mechanic, artizan, or tradesman, any materials or articles to make or construct, in whole or in part, any article of furniture or jewelry, or implement, utensil, clothing, or other article of value, such mechanic or artizan if the same be not taken away, and his fair and reasonable charges paid, shall have the power, after one year from the completion thereof, and such charges have been due and payable for that length of time, to sell and dispose of the same; or if the same be susceptible of division, without deterioration or injury, to sell and dispose of so much thereof as may be necessary to pay his charges for his labor and skill employed thereon, and for any materials which he may have furnished in the making and construction thereof. * Lien of artizan, &c. in case of failure to pay, how enforced.

SECT. 29. When any person shall leave or deposit with any mechanic, artizan, or tradesman, any watch, clock, article of furniture or jewelry, or any implement, utensil, or clothing, or other article of value, to be altered, fitted, or repaired, and shall fail or refuse for one whole year from the time the work to be done thereon shall have been completed, to pay the fair and reasonable charges therefor, such mechanic, artizan, or tradesman, may sell and dispose of the same, or so much thereof as can be sold without injury, to defray such charges. The same, in case of repairs.

SECT. 30. Such mechanic, artizan, or tradesman, shall make such sale at public auction, to the highest and best bidder therefor, for cash, or on such reasonable credit as may be deemed advisable, taking sufficient sureties in case of a sale on time as will secure the payment of the purchase money. Sale to be by auction.

* See *Ewing* v. *French*, 1 Blackf. 353.

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Notice of the sale.

SECT. 31. Before making such sale, he shall give public notice of the time and place thereof, by publishing the same in some public newspaper printed in the county, or if there be no such paper, by advertisements set up for ten days in three of the most public places in the city or township where such mechanic, artizan, or tradesman resides, one of which shall be in some conspicuous part of his shop, or place of business.

Surplus paid to treasurer of county, if the owner absent.

SECT. 32. When such article or articles shall be sold as aforesaid, so much of the proceeds of such sale as remain after the payment of the charges for such alterations and repairs, and for the publication and notice as aforesaid, if the owner be absent, shall be deposited in the hands of the treasurer of the proper county by the person or persons making such sale, taking the treasurer's receipt therefor.

Shall be loaned &c.

SECT. 33. Said sum shall remain subject to be drawn for by the person legally entitled thereto: if, however, one year shall elapse before such person or persons shall make demand therefor of such treasurer, such treasurer shall loan the same out at a rate of interest of not less than six per cent. per annum, upon good security, the interest thereof to be applied to the use and benefit of the county library of the proper county.

Lien in case of bailee, how satisfied.

SECT. 34. The provisions of this article, except as provided in the next section, shall apply to all cases of personal property on which the bailee or keeper thereof has by law a lien for any feed, keeping, or care by him bestowed on such property, except in cases where the person liable shall have died before the expiration of one year from the time such charges had accrued, in which case such sale shall not be made until the expiration of six months from the time of his decease.

As to cattle, hogs, &c.

SECT. 35. In the cases embraced in the last preceding section, if the property bailed or kept be horses, cattle, hogs, or other live stock, and in all cases embraced in the provisions of this article, where the property is of a perishable nature, and will be greatly injured by delay, the person to whom such charges may be due may, after the expiration of thirty days from the time when such charges shall have become due, proceed to sell and dispose of such property, or so much thereof as may be necessary, as hereinbefore provided.

Additional compensation in such cases.

SECT. 36. If any additional compensation for the keeping and taking care of such property has been necessarily incurred, the same shall be taken from the proceeds of the sale thereof, as a part of the charges to which such bailee is entitled.

Copies of notices, &c. verified by oath to be filed.

SECT. 37. Attested copies of the notices required by this article, and of the publication thereof, and an affidavit of the mechanic, artizan, tradesman, or bailee, or some competent witness on his behalf, setting forth his claim, shall be filed and kept in the clerk's office of the county where such sale was made; and the same, or copies thereof, attested and sealed by such clerk, shall be received as testimony in the courts of this state, and shall be presumptive evidence of the matters therein contained.

Effect in evidence.

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CHAPTER 43.

OF PROCEEDINGS TO TRY THE RIGHT OF PROPERTY TAKEN IN EXECUTION.

SECTION

1. Who may assert claim to property taken in execution; statement of claim; affidavit.
2. Claimant may file bond for release of property, etc.—condition of bond.
3. Property, when to be delivered to claimant.
4. Justice to docket cause—notice to execution plaintiff and officer of trial—time of trial—execution suspended.
5. Change of venue—continuances—judgment, etc.
6. Cause of action—amendments—defence, etc.
7. Justice or jury may try cause—jurors how summoned.
8. Jury of twelve shall find value of property, and if less than twenty dollars, party calling jury to pay jury costs.
9. Appeal.
10. Appeal, how tried—value of property shall be assessed.
11. Property not delivered to claimant in certain cases until time for appeal shall have elapsed.
12. Circuit court to adjudge five per cent. on appeal, etc.
13. Appeal to supreme court—ten per cent. damages in supreme court.
14. Interest of partners, etc.
15. Effect of judgment.
16. Trial of right of property in case of foreign and domestic attachment.
17. Measure of damages on bond.
18. Action on bond in case of several execution plaintiffs.

SECTION 1. Whenever one or more executions shall be levied on any personal property of any person other than the execution defendant, such person, his agent, or attorney may file with any justice of the peace of the township in which such property shall have been levied upon, a claim in writing stating that such person is the owner absolutely, or by mortgage or pledge, by deed or parol, of such property, specifying the several articles thereof, and that the same is so taken in execution; which statement shall be verified by oath or affirmation appended to such statement, to be true as the affiant verily believes.*

Who may assert claim to property taken in execution.

Statement of claim.

Affidavit.

SECT. 2. Said claimant, his agent, or attorney, on filing such claim, or at any time before the final decision thereof, may file a bond in a penalty of double the value of the property claimed but not to exceed double the amount, including costs, due on such execution, with surety to be approved by the justice, and conditioned that such claim shall be well and truly prosecuted to effect, or in default thereof, that such property, or so much thereof as may be finally decided to be subject to such execu-

Claimant may file bond for release of property, &c.

Condition of bond.

* The party might proceed by an action of trover, replevin or trespass de bonis asportatis. *Chinn* v. *Russell*, 2 Blackf. 172.

The affidavit and claim of a third person to property taken in execution, should show whether the claimant be the absolute owner, or whether his claim be conditional, and if the claim be conditional, whether it was created by deed or parol; but if the objection for a defect in these particulars be not made before the justice it is waived. *Hamble* v. *Williams*, 4 Blackf. 473.—*Hankins* v. *Ingols*, 4 Blackf. 35.

As to a mortgage of goods, etc., see *Hamilton* v. *Mitchell*, 6 Blackf. 131.—*Watson* v. *Williams*, 4 Blackf. 26.—*Hankins* v. *Ingols*, 4 Blackf. 35.—*Case* v. *Winslop*, 4 Blackf. 425.—*Jordan* v. *Turner*, 3 Blackf. 309.—*Foley* v. *Knight*, 4 Blackf. 420.

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tion, shall be delivered to the person entitled to receive the same, without demand thereof, in as good condition as the same can be kept by care and diligence.

Property when delivered to claimant.

SECT. 3. Whenever such bond is filed as aforesaid, and not before, the property claimed shall be forthwith delivered on request, to the claimant his agent, or attorney, by the officer or person having the same in his custody.

Justice to docket cause. Time of trial.

SECT. 4. On filing said claim as aforesaid, the justice shall docket said cause for trial, making the execution plaintiff the defendant, and shall fix a day for trial within five days thereafter,

Notice to execution plaintiff, &c.

of which the execution plaintiff, his agent, or attorney, if in the county, and the officer holding such execution, shall have three days' notice, unless the same be waived and a speedier

Execution suspended.

trial agreed to by said parties; and further proceedings on such execution shall be thereupon suspended until such claim be abated, dismissed, or a final decision thereon had.

Change of venue; continuances, judgment &c.

SECT. 5. A change of venue and continuances may be granted, new trials awarded, and judgments, and executions, and other proceedings may be had in any such cause as in other civil actions before justices of the peace, so far as the rules therein are applicable, except as herein otherwise provided.*

Cause of action amendments, defence, &c.

SECT. 6. No cause of action in writing, other than such verified claim, shall be required to be filed in any such cause, and the same may be amended in form or in substance as in other suits, and the execution plaintiff shall have the benefit of all legal evidence in his defence without filing any written defence or statement.

Justice or jury may try cause.

SECT. 7. Such justice shall hear and try such cause unless either party require a jury of three, six, or twelve citizens of the county, in which case the highest number of jurors required, being one of the aforesaid numbers, possessing the qualifications of jurors in civil actions, before a justice, shall be

Jurors, how summoned.

summoned as in other cases, to try such cause and give a verdict on which judgment shall be rendered as in other cases so far as applicable.

Jury of twelve to find value of property: if less than $20, party calling such jury to pay costs.

SECT. 8. Every jury of twelve in any such case before the justice, or on the appeal, shall in their verdict assess the value of the property claimed, and if the same do not exceed the sum of twenty dollars, the party requiring such jury shall pay the costs occasioned thereby, unless the other party shall have joined in such requisition; and if such jury return a ver-

If jury omit value, no fees allowed them.

dict, and omit to return such assessed value, they shall not be allowed their fees as such, but such omission shall not vitiate their verdict.

Appeal.

SECT. 9. An appeal may be taken from the judgment of the justice in any such cause, within ten days from the rendition

* The execution defendant, on a trial of right of property between the claimant and execution plaintiff is a competent witness for the claimant.—*Hankins* v. *Ingols*, 4 Blackf. 35.

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thereof, and not after, under the same rules and provisions that obtain in other cases before justices of the peace.*

Appeal, how tried.

SECT. 10. Such appeal shall be tried by the court, unless a jury be required; and for the purpose of determining whether an appeal may be taken, or a writ of error lie on the judgment of the circuit court on such appeal, whenever the jury shall omit to find the value of the property claimed, or whenever the circuit court shall try such appeal, such court shall assess the value of such property.

Value of property shall be assessed.

SECT. 11. On a decision in favor of such claim, or any part thereof, before the proper justice, such property, or such part thereof as may be decided to be the property of the claimant, shall not be delivered as aforesaid, until the time for taking an appeal from such decision to the circuit court shall have elapsed, unless such bond shall be first executed and filed as aforesaid, conditioned for a delivery as mentioned in the second section of this chapter, or unless with the consent of the execution-plaintiff.

Property not delivered to claimant, in certain cases, until time for appeal has elapsed.

SECT. 12. Such circuit court shall also give judgment for five per centum in damages in favor of the execution-plaintiff, on the value of the property adjudged by such court to be subject to such execution; and if the jury shall have omitted to assess such value, or if no jury shall have tried such cause, the court shall determine the amount of the five per centum from evidence, if necessary, after trial.

Circuit court to adjudge five per cent. on appeal, &c.

SECT. 13. If the claimant shall remove such cause to the supreme court, by appeal or writ of error, which may be done, subject, however, to the same rules and restrictions regulating the removal of other civil causes originating before a justice of the peace, the supreme court shall adjudge ten per centum damages in favor of such execution-plaintiff, on the value of the property which may have been adjudged by the circuit court as subject to such execution, if such judgment be affirmed by the supreme court.

Appeal to supreme court, &c.

Ten per cent. damages in supreme court.

SECT. 14. No claim interposed by one or more partners for their individual interest in any personal property so levied on, shall prevent the sale under execution of the undivided interest therein belonging to an execution defendant.

Interest of partners, &c.

SECT. 15. Any judgment contemplated by the provisions of this chapter shall, while the same remains unreversed, be conclusive as to any party who had personal notice of the trial.

Effect of judgment.

SECT. 16. Personal property taken by virtue of a writ of foreign or domestic attachment, may be claimed, and such further proceedings thereon shall be had as is provided by this chapter in cases of personal property taken in execution, and a judgment on a trial of the right of property taken in attachment

Trial of right of property in case of foreign or domestic attachment.

* One of the execution-plaintiffs, in case of the trial of the right of property in the goods levied on, prayed an appeal, the others saying they would proceed no further. On the appeal, the cause was decided against the claimant, no objection being made as to parties. *Held*, that there was no error. *Holcomb* v. *Johnson*, 3 Blackf. 368.

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while the same remains unreversed, shall be conclusive on any party who had personal notice as aforesaid.*

Measure of damages on bond.

SECT. 17. On the breach of the condition of any of the bonds aforesaid, damages shall be recovered in a suit thereon to the value of the property failed to be delivered, or of the injury done thereto, or sustained, as the case may be, and it shall be discretionary to assess not exceeding ten per centum on such value, as additional damages; but the damages recovered shall never exceed the amount, including costs, due on such execution or executions, with ten per centum interest thereon.

Action on bond in case of several execution plaintiffs.

SECT. 18. In case there were two or more executions, and the plaintiffs therein to whom such bond was executed were different; on a breach or breaches of the condition thereof, the plaintiff or plaintiffs in each execution may have a separate action and judgment for his or their equitable part of such damages, or they may sue jointly and have separate judgments therefor, and execution may issue, stay be taken, or appeal had on the same, as on an independent judgment.

CHAPTER 44.

OF ARBITRATIONS.

SECTION

1. Who may submit matter to arbitration—subject of award
2. Exceptions.
3. Arbitration bond.
4. Either party may appoint time for arbitrators to meet and give notice thereof.
5. Oath of arbitrators.
6. Who may administer oaths to arbitrators and witnesses.
7. Witnesses how summoned, etc.
8. Parties to exhibit proofs, etc.—all the arbitrators must attend, but a majority may make award.
9. Award to be in writing and signed, etc.
10. Fees of justice of the peace and witnesses.
11. Copy of award, etc., given to each party.
12. Award may be filed in court.
13. Proceedings for rule against the party failing to comply with award.
14. Judgment on award.

SECTION

15. If rule served ten days, etc., court may determine on award.
16. Grounds which adverse party may show against judgment being rendered on award.
17. Cases in which court may modify or correct award.
18. Court to hear proofs, etc., of the parties—may give judgment, etc. or vacate award.
19. Judgment on an award for a sum of money, and the performance of any act required by such award.
20. Costs.
21. Court may enforce award to perform act other than the payment of money, by attachment.
22. Reference of accounts, etc.
23. Referees may be sworn, etc., and shall investigate the matters submitted, and report thereon.
24. Report to be recorded and shall have effect of a verdict.
25. Judgment thereon.
26. Fees of arbitrators and referees.

* See ante page 770.

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ARTICLE 1.

Who may submit matter to arbitration.

Subject of award.

SECTION 1. All persons, except infants, married women, and insane persons, may, by an instrument in writing, submit to the arbitration or umpirage of any person or persons, to be by them mutually chosen, any controversy existing between them, which might be the subject of a suit at law or in equity, except as otherwise provided in the next section, and may agree that such submission may be made a rule of any court of record to be designated in such instrument.*

Exceptions.

SECT. 2. No such submission shall be made respecting the claim of any person to any estate in fee or for life to any real estate; but any claim to an interest in a term for years, or for one year or less, in real estate, and controversies respecting the partition of lands between joint tenants or tenants in common, or concerning the boundaries of lands, or concerning the assignment of dower, may be submitted to arbitration.†

Bond.

SECT. 3. When an agreement has been entered into as provided in the two preceding sections, the parties shall enter into bonds duly executed, sealed, and delivered, with condition to abide and faithfully perform the award or umpirage, specifying in such bonds the name or names of the arbitrator or arbitrators, and the matter or matters submitted to his or their determination, and also the agreement of the parties that the submission shall be made a rule of court, specifying the court designated in such agreement of submission.‡

* When a cause is pending it may be referred to arbitration by consent of parties, and such submission made a rule of court. At common law, however, if no suit were pending, and any matter in controversy were submitted to arbitration, such submission could not be made a rule of court; but the party was left to his action on the award or arbitration bond. The object of the statute is to give the parties the same remedies that the common law gives in cases referred after the commencement of a suit. See note 1 to the case of *Mills* v. *Conner*, 1 Blackf. 7.—*Titus* v. *Scantling*, 4 Blackf. 89.

When the reference is made to more than one arbitrator, and it is provided that, in in case they shall disagree, another shall decide, that other is called an *umpire*. The determination made by an arbitrator or arbitrators is termed *an award;* that by the umpire an *umpirage*, or less correctly an award. The nomination of an umpire is either made by the parties themselves, at the time of their submission, or left to the discretion of the arbitrators. If the arbitrators make an award within the time allowed to them, that shall be considered as the real award; if they make none, then the umpirage shall take place. The umpire has no authority to act absolutely, but only conditionally, if the arbitrators make no award within their time. This applies equally to the case where the umpire is confined to the same time with the arbitrators, and to that where a further time is given to him. The usual course is for the umpire to adopt the opinions of the arbitrators, so far as the arbitrators concur, confining his examination to those points as to which such arbitrators disagree; and he is justified in so doing unless *requested* to examine the witnesses.—See Kyd's treatise on the law of awards.

Either party may revoke the submission, subject, however, to the right of the other party to recover of him the damages sustained by such revocation. *Allen* v. *Watson*, 16 Johns. N. Y. Rep. 205.—If the submission be by deed, the revocation must be by an instrument of as high a nature. *Wild* v. *Vinor*, Brown 62.—The submission is revoked by the death of either of the parties before the award is delivered. *Touisant* v. *Hartop*, 7 Taunt. 571.—*Cooper* v. *Johnson*, 2 B. & A. 394.—Marriage of a feme sole is a revocation of the arbitrators' authority, and a breach of the covenant to abide an award. *Charnelly* v. *Winstanley*, 5 East 266.

† See 1 Bac. Abridg. 132. 3 Black. Comm. 16.

‡ It is not necessary in an action on a bond, conditioned for the performance of an award, that a plea in bar admitting the execution of the bond, but denying that any award had been made, should be verified by affidavit. *Titus* v. *Scantling*, 3 Blackf. 372. See *Dickerson* v. *Tyner*, 4 Blackf. 253.

An action of debt still lies on an arbitration bond at common law, although such bond contain no agreement that the submission should be made a rule of court. *Titus* v. *Scantling*, 4 Blackf. 89.

As to the form of the rule of reference, &c., submission bond, award, and rule for making submission by bond a rule of court—see 1 Blackf. 433—436.

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Either party may appoint time for arbitrators to meet, and give notice thereof.

SECT. 4. As soon as such bonds are duly delivered, either party may appoint a time and place for the arbitrators to meet, and give written notice thereof to the opposite party and to such arbitrator or arbitrators, at least ten days before the time appointed for such meeting. *

Oath of arbitrators.

SECT. 5. Before proceeding to hear any testimony, such arbitrator or arbitrators shall be sworn faithfully and fairly to hear and examine the matters in controversy, and to make a just award, according to the best of his or their understanding.

Who may administer oaths, &c.

SECT. 6. Such oath, and the oaths to witnesses, may be administered by any judge of a court of record, or any justice of the peace.

Witnesses, how summoned, &c.

SECT. 7. Witnesses may be required to attend before arbitrators, on behalf of either party, by subpœnas to be issued by any justice of the peace, in the same manner, and with the like effect, and subject to the same process and penalties for disobedience, to be enforced by such justice of the peace, as in cases of trials before justices of the peace. †

Parties to exhibit proofs, &c.

All the arbitrators must attend, but a majority may make award.

SECT. 8. At the time and place appointed when the arbitrator or arbitrators shall be ready to proceed to business, the parties may proceed to exhibit their proofs: all the arbitrators must meet together and hear all the allegations of the parties, but the award of a majority of them shall be valid, unless the concurrence of all the arbitrators be expressly required in the submission.

Award to be in writing, and signed, &c.

SECT. 9. The award of the arbitrators shall be in writing, and signed by them, or a majority of them who shall agree thereto, and shall be attested by a subscribing witness.

Fees of justice of the peace and witnesses.

SECT. 10. The fees of the justice of the peace issuing process, and of the witnesses in such case, shall be the same as allowed before justices of the peace, and shall be ascertained and estimated by the arbitrator or arbitrators, and returned with the award, including therein his or their own fees as allowed by law. ‡

A copy of award, &c. given to each party, &c.

SECT. 11. A true copy of the award, and of the costs aforesaid, shall be delivered to each of the parties, or left at his last usual place of residence, by any one of the arbitrators, within fifteen days after the signing of such award.

* The want of notice of the time and place of the meeting of the arbitrators is no objection to an award, provided the party appeared and was heard before the arbitrators. *Dickerson* v. *Hays*, 4 Blackf. 44.

A party having, by an endorsement on the arbitration bond, agreed that a change should be made as to one of the arbitrators, could not afterwards object to the award, in consequence of its being made in conformity with that agreement. *Jacobs* v. *Moffatt*, 3 Blackf. 395.

† The parties themselves may be examined as witnesses, if the order of reference contain a provision for their examination. *Lloyd* v. *Archbowle*, 2 Taunt. 324—2 Chitty's Gen. Prac. 101.

Where the parties had been examined by consent, the court refused to disturb the award. 2 Chitty's Gen. Prac. 101.

‡ See post section 20, of this chapter.

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Award may be filed in court.

SECT. 12. If either of the parties shall fail or refuse to comply with such award, the other party may file the same, together with the agreement of submission, in the court named in such submission.

Proceedings for rule against the party failing to comply with award.

SECT. 13. Upon such submission being proved by a subscribing witness thereto, or in case of his death, insanity, or absence out of the state, then by proof thereof as in other cases of a written instrument, and upon the award also being proved in like manner, or by the arbitrators, or any of them; and upon proof that a copy of the award has been duly served on the party against whom the rule is asked, the court shall cause such submission and award to be entered of record, and shall grant a rule thereon against the adverse party, to show cause at that or the succeeding term of the court, why judgment shall not be rendered by such court upon the said award.*

Judgment on the award.

SECT. 14. Upon the return of the rule the court shall confirm the award and render judgment thereon, unless the award be vacated, or modified, or postponed, as herein provided, which judgment shall have the same force and effect as judgments in other cases.

If rule served ten days, &c. the court may determine on award, &c.

SECT. 15. If the rule has been served ten days or more on the adverse party before the time set for showing cause against the award, the court may proceed to examine and determine the same in his absence; or if he appear, they shall proceed to hear and determine the grounds alleged against such award, if there be any.

Grounds which adverse party may show against judgment being rendered on such award.

SECT. 16. In all cases where an award or umpirage shall be presented to any court of record for a judgment to be entered thereon, whether the reference shall have been made by submission of parties as aforesaid, or by rule of court, the adverse party may show for cause against the rendition of such judgment, any of the following grounds:

1. That such award or umpirage was obtained by fraud, corruption, partiality, or other undue means; or that there was evident partiality or corruption in the arbitrators or any of them;

2. That the arbitrator or arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence material and pertinent to the controversy, or any other misbehaviour by which the rights of any party shall have been prejudiced;

3. That the arbitrator or arbitrators exceeded his or their powers; or that he or they so imperfectly executed them that

* See *Dickerson* v. *Hays*, 4 Blackf. 44—*Nelson* v. *Hinesley*, 3 Blackf. 432.

Although the bond contain an agreement that the submission may be made a rule of court, the successful party may still resort to the remedy at common law, and sue on the award or bond. See *Dickerson* v. *Tyner*, 4 Blackf. 253.

An executor or administrator may maintain an action on an award, though the matters submitted arose out of tort. Ibid.

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PART III.

a mutual, final, and definite award on the subject matter submitted was not made.*

Cases in which court may modify or correct award.

SECT. 17. Any party to such submission may move the court to modify or correct such award or umpirage in the following cases:

1. When there is an evident miscalculation of figures, or an evident mistake in the description of any person, thing, or property referred to or mentioned in such award or umpirage;

2. When the arbitrator or arbitrators shall have awarded upon some matter not submitted, and not affecting the merits of the decision upon the matters which were submitted;

3. When the award or umpirage shall be imperfect in some matter of form not affecting the controversy, and when if it had been a verdict, such defect could have been properly amended or disregarded by the court.†

Court to hear proofs, &c.

SECT. 18. The court shall hear the proofs and allegations of the parties to invalidate and sustain such award or umpirage, and shall decide thereon, either confirming such award or umpirage, or may modify and correct the same in the cases

May give judgment, &c.;

prescribed in the last preceding section so as to effect the intent thereof, and to promote justice between the parties, and shall render judgment on such original or corrected award or

Or vacate award.

umpirage; or the court may vacate such award or umpirage, for any of the causes herein before specified at the costs of the party seeking to enforce such award or umpirage.

Judgment on award for a sum of money and the performance of any act.

SECT. 19. If such award or umpirage be confirmed, judgment shall be given in favor of any party to whom any sum of money or damages shall have been awarded that he recover the same; and if the award or umpirage shall have ordered any act to be done by either party, judgment shall be entered that such act be done according to such award or umpirage.

Costs.

SECT. 20. The costs of the proceedings in court shall be taxed as in suits; and if no provision for the fees and expenses of the arbitration shall have been made in the award or umpirage, the court shall make the allowances therefor; but if there was a suit pending previous to such submission, the costs of which were not noticed by the arbitrators or umpire, the court shall not allow or tax any of the costs thereof prior to such submission.‡

Court may enforce award to perform act other than payment of money by attachment.

SECT. 21. When, by any judgment of the court on award or umpirage, any party shall be required to perform any act other than the payment of money, the court shall have power

* See *Hamilton* v. *Wort*, 3 Blackf. 68.—10 Wend. 589.
An award that one of the parties shall pay the other a certain sum of money cannot be objected to as not being final. *Dickseron* v. *Tyner*, 4 Blackf. 253.
An award in favor of the plaintiff for thirty dollars and seventy-three cents, with the exception of an allowance, as made by the plaintiff, for hauling six hundped and twenty staves, is void for uncertainty. *Parker* v. *Eggleston*, 5 Blackf. 128.
See *Stipp* v. *The Washington Hall Company*, 5 Blackf. 16.

† See 10 Wend. 589.

‡ See *Jacobs* v. *Moffatt*, 3 Blackf. 395.—*Dickerson* v. *Tyner*, 4 Blackf. 253.

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to enforce the same by attachment, until the terms of such judgment shall be complied with.

Reference of accounts, &c. when suit pending.

SECT. 22. In any suit pending in any court where the parties have accounts to produce, one against the other, such parties, their agents, or attorneys at law may consent, by rule of court, to refer the adjustment of such accounts to certain persons mutually chosen by them in open court.

Referees may be sworn, &c. and shall investigate the matters submitted, and report thereon.

SECT. 23. Such referees, if required by the parties, shall be sworn in open court or before any officer authorized to administer oaths, faithfully and impartially to investigate, adjust, and report the matters thus submitted, and shall proceed to the investigation of such matters according to the submission of the parties, and report to the court at such time as shall be agreed by the parties in such rule of reference.

Report to be recorded, and shall have effect of a verdict.

SECT. 24. When such report shall be returned under the hands of the referees or of a majority of them, it shall be entered on the order book, and shall be of the same effect and be deemed and taken to be as available in law as the verdict of a jury.

Judgment thereon.

SECT. 25. Either party may move the court for judgment on such report, and if no sufficient cause be shown to the contrary, judgment shall be rendered thereon in like manner and with like force and effect as if rendered upon the verdict of a jury.

Fees of arbitrators and referees.

SECT. 26. Such arbitrators and referees shall be allowed one dollar per day each, for every day they may be necessarily employed as such arbitrators.

CHAPTER 45.

OF ACTIONS AND PROCEEDINGS RELATING TO REAL PROPERTY.

ARTICLE 1. Of the action by writ of entry upon disseizin.
ARTICLE 2. Of the action of ejectment, and of occupying claimants.
ARTICLE 3. Of the assignment of dower.
ARTICLE 4. Of the partition of lands owned by several persons.
ARTICLE 5. Of proceedings before justices of the peace against tenants holding over.
ARTICLE 6. Of forcible entry and detainer.
ARTICLE 7. Of distress for rent.

ARTICLE 1.

Of the action by writ of entry upon disseizin.

SECTION
1. Who may maintain such action.
2. Where action must be brought.
3. Process shall be a summons.
SECTION
4. Declaration.
5. Not necessary to state title, &c.
6. Precise day named, not material.

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SECTION
7. Descent or discontinuance shall not take away or defeat right of entry, or of action, &c.
8. Actual entry need not be proved: what shall be deemed sufficient proof of seizin.
9. Plaintiff must have the right of entry, &c.
10. What shall constitute a disseizin.
11. Same subject.
12. If premises unoccupied, against whom action brought.
13. Proceedings on the trial.
14. Joint tenants, &c., how they may sue, &c.
15. Plaintiff may recover less than the whole premises claimed.
16. General issue: defendant may show all matters of defence in bar, &c. under it.
17. Pleas of non-tenure, disclaimer, &c.
18. Landlord and tenant may join in defending, &c.
19. Action not to fail for too many plaintiffs, if any entitled to recover.
20. Plaintiff may in such action recover damages.

SECTION
21. Last section restricted.
22. If defendant suggest on the record, under oath, that he is entitled to relief for improvements, &c., question of damages postponed.
23. No writ of seizin shall issue until question of claim for improvements settled.
24. Case of death of party after judgment by or to whom money is payable, &c.
25. If party die after judgment, how writ of seizin shall issue, &c.
26. This action shall embrace common law remedies.
27. Final judgment, how far conclusive.
28. Same subject.
29. Limitation of actions.
30. If plaintiff die pending action, heir may appear, &c.
31. Same, in case of several plaintiffs.
32. Suit may proceed when right passes to surviving plaintiff, or where heir does not appear.
33. Death in case of several defendants.

Who may maintain such action.

SECTION 1. Whenever a person holds possession of lands, tenements, or hereditaments, to the exclusion of the rightful owner of an estate of freehold, whether such possession be acquired by unlawful entry thereon, or by an unlawful detainer after lawful entry, the lawful owner of such lands, tenements, or hereditaments, may recover the same by a writ of entry upon disseizin against the unlawful possessor, and shall in such action recover the possession thereof, together with damages for the unlawful detention of such possession.

Where action must be brought.

SECT. 2. Such action of disseizin shall be brought in the circuit court of the county where the premises in dispute are situate; but where parts of such premises are situate in different counties, such action may be brought in any of such counties.

Process shall be a summons.

SECT. 3. The process by which the defendant shall be required to answer the plaintiff's action shall be a summons, to be issued after filing the declaration, and directed to the proper officer of the court out of which such summons shall issue, and shall be served and returned like similar process in other actions at law.

Declaration.

SECT. 4. It shall be sufficient for the plaintiff in such action to state in his declaration the nature of the estate which he claims, whether in fee simple absolute, or any lesser essate, and to describe the lands, tenements, or hereditaments that he was seized or possessed of, with sufficient precision and certainty to be distinguished from other lands, tenements, or hereditaments,

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that he was seized or possessed of the premises on a day certain, and that afterwards on the same day, the defendant entered thereon, disseized the plaintiff thereof and put him out therefrom, and that the defendant has taken the profits thereof to himself, and thereupon demand seizin or possession of the premises, and damages for the detention thereof.

Not necessary to state title, &c.

SECT. 5. It shall not be necessary to set forth the original gift, devise, or other conveyance or title by which the plaintiff claims the estate.

Precise day named, not material.

SECT. 6. The precise day named shall not be material, so that it be alleged within the time hereinafter limited for bringing such action.

Descent, &c. not to take away right, &c.

SECT. 7. No descent or discontinuance which may hereafter occur, shall take away or defeat any right of entry or of action for the recovery of real estate.

Actual entry need not be proved: what shall be deemed sufficient proof of seizin.

SECT. 8. The plaintiff shall not be required to prove an actual entry under his title, but if he shall prove that he is entitled to such an estate as he claims in the premises, whether as heir, devisee, purchaser, or otherwise, and also that he has a right of entry therein, these shall be deemed sufficient proof of his seizin as alleged in the delaration.*

Plaintiff must have right of entry, &c.

SECT. 9. No such action shall be maintained unless the plaintiff, at the time of commencing the same, had a right of entry into the premises.

What shall constitute a disseizin.

SECT. 10. Every person who is in possession of the premises demanded in such action, claiming any estate of freehold therein, may be considered a disseisor for the purpose of trying the right, whatever may have been the manner of his entry on the premises.†

Same subject

SECT. 11. If the person in possession shall have actually ousted the plaintiff or withheld from him the possession of the premises, he may, at the election of the plaintiff, be considered as a disseisor, for the purpose of trying the right, although he should claim therein an estate less than a freehold.

If premises unoccupied, against whom the action may be brought.

SECT. 12. If the premises for which the action is brought are not occupied by any person, the action shall be brought against some person exercising acts of ownership on the premises claimed, or claiming title thereto, or some interest therein at the commencement of the suit.

Proceedings on the trial.

SECT. 13. Every such action shall be prosecuted and conducted in the same manner as if the plaintiff had, at the time of commencing the action, made an actual entry on the demanded premises, and had been immediately ousted by the tenant, so that on said trial upon the general issue, if the plaintiff shall prove that he is entitled to such estate in the premises, as is set forth in the declaration, and that he had a right of entry on the day when the action was commenced, he shall recover the premises, unless the tenant shall prove a better title in himself.

* See *Mosier* v. *Smith*, 3 Blackf. 132.—*Bowser* v. *Warren*, 4 Blackf. 522.—*Taylor* v. *McCrackin*, 2 Blackf. 260.

† See *Churchhill* v. *Loring*, 19 Pick. 465.

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PART III.

Joint tenants, &c., how they may sue, &c.

SECT. 14. Persons claiming the same premises as joint tenants, or tenants in common, may all join, or any two or more of them may join, for the recovery thereof, or any one may sue alone for his particular share.

Plaintiff may recover less than the whole premises claimed.

SECT. 15. The plaintiff may, in all cases, recover any specific part of the premises, or any undivided portion thereof, to which he shall prove a sufficient title, although such part or portion be less than is demanded in the declaration.*

General issue: defendant may show all matters of defence under it.

SECT. 16. The general issue shall be not guilty, in manner and form as alleged in the plaintiff's declaration, and under such issue the defendant may show all matters of defence in bar of the plaintiff's action.†

Pleas of nontenure, disclaimer, &c.

SECT. 17. The pleas of nontenure, disclaimer, several tenancy, and sole tenancy, may be pleaded either in bar or in abatement; but no costs shall be allowed to the party pleading the same, except such as shall accrue after filing the plea.‡

Landlords and tenants, &c. may join in defending, &c.

SECT. 18. Landlords and tenants, or persons standing in the relation of landlord and tenant to each other, may join in defending any such action, and any person standing in the relation of landlord against whom such action may be brought, shall be admitted to defend such action upon showing to the court by affidavit that such relation exists.

Action not to fail for too many plaintiffs if any entitled to recover.

SECT. 19. No such action shall wholly fail by reason that there may be too many plaintiffs joined therein, if there be one or more of such plaintiffs entitled to recover; and in such case judgment shall be for the plaintiff or plaintiffs entitled to recover, to the extent of their right or interest, and against the plaintiff or plaintiffs who are not entitled.

Plaintiff may in such action recover damages.

SECT. 20. If the plaintiff recover judgment in such action, he shall also be entitled to recover in the same action damages against the defendant for the mesne profits of the premises, subject to the limitations herein afterwards contained, and he shall also recover damages for any destruction or waste of the buildings or other property for which the defendant is by law chargeable, any or all of which damages may be assessed by the jury trying such cause, or a writ of inquiry may be awarded.

Last section restricted.

SECT. 21. But the provisions of the last preceding section shall be governed and restricted in all respects by the provisions, restrictions, and rules prescribed in the second article of this chapter, respecting occupying claimants.

If defendant suggest on the record, under oath, that he is entitled to relief for improvments, &c., question

SECT. 22. If the defendant or tenant in possession shall suggest to the court, upon the record, and verify the same by affidavit, that he is entitled to relief in case the plaintiff recover, for and on account of improvements made on the premises, according to the provisions of the said second article of this chapter, the court shall order all questions respecting the plaintiff's da-

* See 2 Pick. 387.—3 Pick. 52.—9 Pick. 259.

† See *King* v. *Barns*, 13 Pick. 24.

‡ See 2 N. Hamp. R. 10, 442.—14 Mass. R. 239.—13 Mass. R. 439.

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mages to be postponed until after the trial and determination of the question of title.

of damages postponed.

SECT. 23. No writ of seizin shall issue until the questions respecting the claim of the tenant or defendant, for improvements made on the premises, are adjudicated and finally disposed of.

No writ of seizin shall issue until question of claim for improvements settled.

SECT. 24. If after judgment is rendered in favor of the plaintiff on his title, and either party die before the writ of seizin is executed, or before the case is otherwise settled and disposed of according to the provisions of said second article of this chapter, any money payable by the tenant or defendant may be paid by him or his executors or administrators, or by any person who is entitled to the estate under him, to the plaintiff or his executors or administrators, in like manner and with like effect as if both parties were living; and any money payable by the plaintiff may be paid by him or his executors or administrators, or by any person who is entitled to the estate under him, to the tenant or person entitled thereto, or to his executors or administrators, in like manner and with like effect as if both parties were living.

Case of death of party after judgment, by or to whom money is payable, &c.

SECT. 25. The writ of seizin when issuable in any case, shall be issued in the name of the original plaintiff against the original tenant or defendant, although either or both of them be dead; and when executed it shall enure to the benefit of the plaintiff, or whoever is then entitled to the premises under him, in like manner as if it had been executed on the day when the judgment had been rendered.

If party die after judgment, how writ of seizin shall issue, &c.

SECT. 26. The remedy hereby provided shall embrace all the various remedies known to the common law for enforcing the recovery of the seizin or possession of lands, tenements, and hereditaments to the rightful owner of any freehold interest or estate therein, and may be used in lieu thereof.

Action shall embrace common law remedies, &c.

SECT. 27. Final judgment in such action upon default, or upon the trial of the question of title, shall be conclusive upon the parties thereto as to the title established in such action.

Final judgment how far conclusive.

SECT. 28. Such judgment shall also be conclusive upon all persons claiming from, through, or under such parties, by title acquired at any time after the commencement of such action.*

Same.

SECT. 29. No action, as provided in this article, shall be sustained by any person who shall not have had a right of entry within twenty years next before the commencement of such action, unless such person shall have been during such time, or part thereof, without the United States, an infant, a married woman, or insane; and the time of such absence, infancy, coverture, or insanity shall not be reckoned any part of the limitation aforesaid, if such limitation shall have commenced during such inability.

Limitation of action.

* Though a judgment in the action disseizin settles the titles held by the parties at the time of its rendition, it does not prevent the losing party from enforcing a superior title subsequently acquired, nor preclude either of the parties from applying to a court of chancery to perfect his title or to enjoin a judgment obtained contrary to equity. *Taylor* v. *McCrackin*, 2 Blackf. 260.

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If plaintiff die pending action, heir may appear, &c.

SECT. 30. If, in any such action, the plaintiff shall die before final judgment, his heir, at the same term of the court at which the death is suggested, or within such further time as the court shall allow, may appear and prosecute the suit in the same manner as if it had been originally commenced by him.

Same in case of several plaintiffs.

SECT. 31. If there are several plaintiffs in such action, and any of them shall die before final judgment, the heir of the deceased party shall, on motion, be admitted to prosecute the suit jointly with the survivors, in the same manner as if he had been originally joined with them in commencing the suit.

Suit may proceed where right passes to surviving plaintiffs, or when heir does not appear.

SECT. 32. If the interest of the deceased party pass to the surviving plaintiffs, or if there be no motion for the admission of another person as heir, at the term when the death of the deceased party is suggested, or within such further time as the court shall allow, the surviving plaintiff or plaintiffs may prosecute the suit for so much of the premises in question as may then be claimed by them.

Death in case there be several defendants.

SECT. 33. When there are several defendants in any such action and any of them shall die before final judgment, the action may be prosecuted against the surviving defendant or defendants for so much of the premises as they may hold or claim.*

ARTICLE II.

Of the action of ejectment; and of occupying claimants.

EJECTMENT.

SECTION
34. Notice of action.
35. Who may be made defendant.
36. Judgment against casual ejector.
37. Surety for costs.
38. Action may not abate by death of defendant, etc.
39. As to joint and several demises.
40. As to the declaration.
41. Consent rule.
42. Plaintiff shall specify lands for which he intends to proceed, if required by the defendant.
43. After issue no exception to declaration allowed.
44. Limitation of action.
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OCCUPYING CLAIMANTS.

46. As to occupying claimants.
47. Certain claimants entitled to benefit of last section.
48. Occupying claimant how to apply for relief.
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49. Assessment of value, etc., to be by a jury, etc.—How court shall instruct such jury, etc.
50. Successful claimant may elect to pay for improvements, or release the land at its value, etc.
51. Successful claimant paying value of improvements, etc., or tendering deed, etc., may have a writ of possession.
52. Cases in which occupying claimant shall not be evicted.
53. Case in which he shall not be liable for rents and profits.
54. Assessment of value of improvements, etc., may be made by arbitrators.
55. Appeal or writ of error allowed.
56. Actions for rents and profits limited.

CLARK'S GRANT.

57. Occupying claimants in Clark's grant.
58. Shall not be evicted till paid taxes, etc.
59. Jury.

* See ante, p. 683, sec. 85.

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SECTION
60. If successful claimant decline to pay, etc., ground rent assessed.
61. Assessment to be recorded.
62. Ground rent payable annually.
63. Either party may have a review.
SECTION
64 How occupying claimant's right may be extinguished.
65. Valuation of improvements may be reviewed.

Ejectment.

Notice of action.

SECT. 34. No plaintiff shall proceed in ejectment to recover possession of any lands or tenements against a casual ejector, without notice being given to the tenant in possession if any there be, by the service of the declaration and common notice attached, ten days before the first day of the term of the court to which return thereof is made.*

Who may be made defendant.

SECT. 35. The court, on application made for that purpose, may make the tenant or landlord, or both, or any other person claiming title to the premises, defendant in place of the casual ejector.

Judgment against casual ejector.

SECT. 36. In case any tenant to whom a declaration in ejectment shall be delivered, shall fail to appear, the plaintiff, on proof of the delivery of the declaration as aforesaid, shall have judgment against the casual ejector, unless the tenant in

* As to the notice before the term of the court see *Doe* v. *Griffin*, 3 Blackf. 136.

To enable the plaintiff to recover in ejectment he must have the legal title. *Jared* v. *Goodtitle*, 1 Blackf. 26.

A tenant at will can maintain an action of ejectment. 1 Blackf. 26.

One tenant in common may sue separately in ejectment for his individual share of the estate. *Chesround* v. *Cunningham*, 3 Blackf. 82.

An executor may maintain ejectment for lands held by the testator for a term of years. *Duchane* v. *Goodtitle*, 1 Blackf. 117.

It is not prerequisite to a recovery in ejectment that the plaintiff should trace his lessor's title back to the government: the legal right of possession is the subject of controversy in this action, not the ultimate title to the land. *Doe* v. *West*, 1 Blackf. 133.

In ejectment not barred by the statute of limitations, a prior peaceable possession under a claim of right, will prevail against a mere intruder. Ibid.

If the purchaser of real estate at sheriff's sale, bring an action of ejectment to recover possession, and the defendant be any other person than the judgment debtor, the plaintiff must prove the title of the debtor to the premises. *Calloway* v. *Doe*, 1 Blackf. 372.

It is generally necessary, in ejectment, for the plaintiff to show a right of possession in his lessor at the date of the demise, and at the time the action was commenced. *Jackson* v. *Hughes*, 1 Blackf. 421.

In ejectment on several demises of separate tracts of land, laid in different counts, if there be proof of one count only, the verdict should be in favor of the plaintiff on that count, and of the defendant on the others. But if, in such case, there be a general verdict of guilty, judgment may be taken on the count proved, and a nolle prosequi entered as to the others. *Fite* v. *Doe*, 1 Blackf. 127.

In the action of ejectment an equitable title cannot be set up in opposition to a legal title. *Smith* v. *Allen*, 1 Blackf. 22. And see *Taylor* v. *McCrackin*, 2 Blackf. 260.—*Rench* v. *Doe*, 2 Blackf. 309.

In an action of ejectment, the previous recovery of the defendant against the plaintiff's lessor in a forcible detainer, is no bar to the suit. *Buntin* v. *Doe*, 1 Blackf. 26.

If a defendant in ejectment have a legal title to the premises, and neglect to produce it in that action, he cannot, after a verdict against him, obtain an injunction of the proceedings at law by a bill in chancery founded on the same title. *Brown* v. *Wyncoop* 2 Blackf. 230.

The defendant may show that the title of the plaintiff's lessor has expired. *Doe* v. *West*, 1 Blackf. 133.

As to when a notice to quit or demand of possession is necessary, see *Clawson* v. *Doe*, 5 Blackf. 300.—*Taylor* v. *McCrackin*, 2 Blackf. 260.—*Bowser* v. *Warren*, 4 Blackf. 522.—*Smith* v. *Allen*, 1 Blackf. 22.

The question whether a deed be fraudulent and void as to creditors, may be examined and decided in an action of ejectment. *Brown* v. *Wyncoop*, 2 Blackf. 230.

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possession, or landlord, or other person claiming title to the premises, or any part thereof, shall apply to be made defendant, and enter into the common consent rule within the term at which the said tenant had notice to appear.*

Surety for costs.

SECT. 37. If the lessor of the plaintiff be a non-resident of the state, or an infant, or shall die, the court, on motion supported by affidavit, may stay proceedings in the action until a real and substantial person, resident of the county, shall be given as surety for the payment of costs.

Actions may not abate, &c.

SECT. 38. No action of ejectment pending in any court shall abate by the death of the defendant before final judgment, but the cause of action shall survive against the heir or devisee of any such deceased defendant; and said heir or devisee may be made defendant to any such action, in the same manner that an executor or administrator may be made a party to any personal action.

As to joint and several demises

SECT. 39. In all actions of ejectment, the plaintiff shall have the same benefit and advantage from a joint demise that he could from several demises. †

As to the declaration.

SECT. 40. In actions of ejectment, a copy of the declaration served on the tenant in possession shall be filed in court, and shall be the declaration on which the cause shall proceed; but the name of the casual ejector may be erased, and that of the new defendant inserted at any time previous to judgment.

Consent rule.

SECT. 41. When any person is made defendant in the room of the casual ejector, he shall draw up and file with the general issue, a written confession of lease, entry, and ouster, and that such defendant is in possession of the premises, or of that part which he defends; and in case he does not defend for the whole, he shall specify the particular part for which he does defend; except that when one tenant in common is sued by his co-tenant, he shall not be obliged to confess ouster.

Plaintiff shall specify lands for which he intends to proceed, &c.

SECT. 42. The plaintiff, upon being served with notice for that purpose, shall, if the same be necessary, furnish to the defendant a written specification of the lands for which he intends to proceed; and when service of such notice is given, no further proceedings in the cause shall be had on the part of the plaintiff

* An infant having a title to land for which an action of ejectment is brought, has a right to be admitted a defendant on the usual terms; and the court should appoint a guardian for him, in order that he may be enabled to defend the suit. *Glass* v. *Doe*, 2 Blackf. 293.

In ejectment, *A* and *B* were admitted defendants, the former as tenant, the latter as landlord. *Held* that *A* was precluded, by his appearance as *B*'s tenant, from afterwards showing that he was the tenant of the plaintiff's lessor, and entitled to notice to quit. *Jones* v. *Doe*, 1 Blackf. 351.

As to proof of the testator's death, in case of an executor, who claims under such testator, being admitted instead of the tenant in possession, see *Buntin* v. *Doe*, 1 Blackf. 26.

† At common law, coparceners and joint tenants are obliged to lay a joint demise, while tenants in common are forbidden to lay any but separate demises. "The same advantage shall be had from a joint as from separate demises," means, that, as tenancy in common was the only species of joint interest in which separate demises *must* be laid, hereafter, a joint demise should be equally proper. See lessee of *Adams* v. *Turner*, 7 Ohio R. (part 2,) 136. But a person having exclusive title to lands, cannot unite with himself, in a joint demise, persons having no title. Ibid. See ante page 438, sect. 130.

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until such specification be furnished to the defendant's attorney, or filed in the clerk's office.

After issue, no exception to declaration allowed.

SECT. 43. After issue joined in ejectment, on the title only, no exception of form or substance shall be taken to the declaration.*

Limitation of action.

SECT. 44. No action of ejectment shall be commenced or maintained for the recovery of any lands or tenements, against any person or persons who may have been in the quiet and peaceable possession of the same, under an adverse title for twenty years, either in his own right or the right of any other person or persons under whom he claims; and any action of ejectment commenced contrary to the provisions of this section, shall be dismissed at the costs of the party instituting the same.

Last section qualified.

SECT. 45. But the preceding section shall not be construed to affect any person who may be a married woman, insane, a minor, or out of the United States, until the expiration of five years from the time such disability is removed.

Occupying claimants.

As to occupying claimant.

SECT. 46. In all cases where any occupying claimant,

1. Being in quiet possession of any lands or tenements, for which such person can show a plain and connected title in law or equity, derived from the records of some public office; or being in quiet possession of and holding the same by deed, devise, descent, contract, bond, or agreement, from and under any person claiming title as aforesaid, derived from the records of some public office, or by deed duly recorded; or,

2. Being in quiet possession of and holding any lands or tenements under sale on execution against any person claiming title as aforesaid, derived from the records of some public office, or by deed duly recorded; or,

3. Being in quiet possession of and holding any lands or tenements under any sale for taxes, authorized by the laws of this state, at any time in force therein; or,

4. Being in quiet possession of any lands or tenements, and claiming title thereto and holding the same under a sale and conveyance made by executors, administrators, or guardians, or by any person in pursuance of any order of court or decree in chancery, where lands are or have been directed to be sold, and the purchaser thereof has obtained the title thereto and possession of the same without any fraud or collusion on his part;

Such occupying claimant shall not be evicted or turned out of possession by any person or persons who shall set up and prove an adverse and better title to said lands or tenements, until said occupying claimant, or his heirs, shall be fully paid the value of all lasting and valuable improvements made thereon by said occupying claimant, or by the person under whom he may hold the same, previous to receiving actual notice by the commence-

* See *Armstrong* v. *Jackson*, 1 Blackf. 210—and see *Fite* v. *Doe*, 1 Blackf. 127.

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ment of suit on such adverse claim, by which such eviction shall be effected; unless such occupying claimant shall refuse to pay the person so setting up and proving such adverse and better title the value of the lands or tenements without the improvements made thereon as aforesaid, upon the demand of the successful claimant, or his heirs, as hereinafter provided.*

Certain claimants entitled to benefit of last section.

SECT. 47. Any occupying claimant having a deed or certificate of sale, from a collector of taxes, or other officer authorized by law to sell and convey lands for the non-payment of taxes, or having a deed under any sale by execution, or on the sale of lands on the application of any executor, administrator, or guardian, in a court having jurisdiction, or on the sale of lands in proceedings in partition, or who shall claim under any person holding any such deed or certificate, shall be considered as having sufficient title to said lands to demand the value of the improvements under the provisions of the last preceding section.

Occupying claimant, how to apply for relief.

SECT. 48. Upon the rendition of judgment against the occupying claimant in any case provided for in this and the preceding article, either party may apply to the court for the assessment of the amount to which such occupying claimant is entitled for improvements, by petition, or by suggestion on the record, stating shortly and succinctly the nature and extent of the claimant's demand therefor.

Assessment to be by a jury.

SECT. 49. The court shall thereupon cause a jury to be empannelled as in other cases of trial by jury, at such time as the court shall direct to assess,

Value of improvements.

1. The value of all lasting and valuable improvements made as aforesaid on the lands in question, previous to actual notice of such adverse claim as aforesaid;

Damages by waste, &c. to premises.

2. The damages, if any, which said premises may have sustained by waste or cultivation to the time of rendering judgment.

Value of rents and profits.

3. The fair value of the rents and profits which may have accrued, and the damages which may have been sustained by waste or cultivation previous to actual notice of the commencement of such action as aforesaid;

Value of estate without improvements, &c.

4. The value of the estate which the successful claimant has in said premises without such improvements, or the damages occasioned as aforesaid by waste or cultivation at the time of rendering such judgment.†

Successful claimant may elect, &c.

SECT. 50. The successful claimant in all cases may, at his election, either demand of such occupying claimant the value of the land as assessed by the jury without the improvements so as aforesaid assessed, and convey the land in question by a sufficient conveyance to the occupying claimant, or he may pay

* This section is not unconstitutional. *Armstrong* v. *Jackson*, 1 Blackf. 374. The legislature cannot deprive the parties of the constitutional right to have the value of the land, improvements, &c. assessed by a jury. Ibid. See *Chesround* v. *Cunningham*, 3 Blackf. 82.

† If the occupant of land evicted by a better title be entitled, under the occupying claimant law, to a compensation for his improvements, he is only liable for the rents and profits of the land without the improvements. *Elliott* v. *Armstrong*, 4 Blackf. 421.

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the occupying claimant the value of the improvements so as aforesaid assessed, within such reasonable time as the court shall allow.

Successful claimant paying value of improvements, &c., or tendering deed, &c., may have a writ, &c.

SECT. 51. If such successful claimant shall pay the occupying claimant the value of the improvements thus assessed, after deducting therefrom the damages found by the jury to have been occasioned by waste or cultivation within the time allowed by the court, or if on demand of the value of the land so assessed as aforesaid, and the tender of a conveyance as above required, the occupying claimant shall neglect or refuse to pay such value within the time allowed by the court, then a writ of seizin or possession, as the case may require, shall issue and be executed as if no such application had been made to have the value of such improvements assessed.

Cases in which occupying claimant shall not be evicted, &c.

SECT. 52. If, however, such successful claimant shall not demand the value of the land in question assessed as above provided without the improvements, and tender a deed as aforesaid, and shall also refuse to pay the occupying claimant such assessed value of the improvements, deducting therefrom the damages occasioned by waste and cultivation within the time allowed by the court, such occupying claimant shall not be evicted from such land, but shall be suffered to remain in possession.

Case in which he shall not be liable for rents and profits, &c.

SECT. 53. In no case shall the occupying claimant who may be evicted be liable to any action or prosecution for and on account of any rents or profits accruing or waste or damages done to said land previous to receiving actual notice of the commencement of such action, unless such waste and damages shall exceed the assessed value of such improvements, deducting therefrom the damages occasioned by waste or cultivation and assessed as aforesaid, and then only to the amount of such excess.

Asssessments may be made by arbitrators, &c.

SECT. 54. The aforesaid assessments and valuations may in all cases be made by arbitrators or referees by the consent of the parties.

Appeal or writ of error allowed.

SECT. 55. Either party may appeal from the decision and judgment of the court to the supreme court, or bring a writ of error as in other cases.

Action for rents and profits limited.

SECT. 56. In actions for the recovery of rents and profits the tenant shall never be liable for the rents and profits for any longer term than six years next previous to the bringing of such action, nor for any waste or damages committed before that time.*

* The defendant in trespass for mesne profits, after a recovery against him in ejectment, cannot plead in bar of the action that the rents and profits, &c. do not exceed the value of his improvements, unless such value had been assessed under the direction of the court that rendered judgment in the action of ejectment. *Chesround* v. *Cunningham*, 3 Blackf. 82.

In tresspass for mesne profits the recovery in ejectment is conclusive against the defendant, as to title, from the time of the demise. *Buntin* v. *Duchane*, 1 Blackf. 56.

In such action the defendant may show, in mitigation of damages, that his possession was under a judgment of a competent tribunal. Ib.—See *Buntin* v. *Duchane*, 1 Blackf. 255.

A suit in chancery lies for an account of mesne profits after a recovery in ejectment, if the bill claims a discovery and shows a right to it. *Elliott* v. *Armstrong*, 4 Blackf. 421.

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Clark's grant.

Occupying claimants in Clark's grant.

SECT. 57. Within the district of country granted by the state of Virginia to general George Rogers Clark, and to the officers and soldiers of his regiment, commonly called "Clark's or Illinois Grant," the following provisions shall govern actions of ejectment and applications by occupying claimants, so far as they contradict or contravene any of the preceding provisions of this article.

Shall not be evicted until paid taxes, &c.

SECT. 58. No occupying claimant within said grant shall be evicted until he be fully paid, in addition to the lasting and valuable improvements above specified, all taxes and assessments which he may have paid on such premises, and all street improvements made thereon by him, or by the person or persons under whom he may hold the same, previous to receiving actual notice of the commencement of suit on the claim by which he is evicted.

Jury.

SECT. 59. The value of such taxes, assessments, and improvements shall be ascertained by a jury as above provided.

If successful claimant decline to pay, &c., ground-rent assessed.

SECT. 60. Whenever the successful claimant shall decline paying to the occupying claimant the value of the improvements, assessments, and taxes assessed as aforesaid, the occupying claimant shall be liable to pay such successful claimant the value of the ground-rent of such premises, to be ascertained by a jury on the application of either party to the circuit court; or the same may be assessed at the instance of either party by the jury empannelled to determine the value of the improvements as aforesaid.

To be recorded.

SECT. 61. When such ground-rent is thus ascertained by the finding of a jury, the court shall order the same to be made of record, and such record shall specify the day of the month and the year on which the judgment in such case was rendered.

Ground-rent payable annually.

SECT. 62. Said ground-rent, when ascertained, shall be payable annually, to be computed from the day of the rendition of such judgment, and shall in all respects be governed by the same rules as other rents, and may be collected in like manner by suit or distress.

Either party may have a review.

SECT. 63. Either party may at any time have a review of such finding of the jury, as to the value of such rents, by application to the proper circuit court on the payment of the costs of such application.

How occupying claimant's right may be extinguished.

SECT. 64. The successful claimant may at any time after any such ascertainment of the ground-rent of said premises, extinguish the right of such occupying claimant by paying him the amount found by the jury as the amount to which he is entitled for the improvements specified as above, and the taxes and assessments paid by him on such premises, with legal interest thereon.

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SECT. 65. The successful claimant may at any time within ten years after the assessment thereof, have the valuation of the improvements reviewed, and reassessed by a jury in the proper circuit court by paying the costs thereof.

Valuation of improvements reviewed.

ARTICLE III.

Of the assignment of dower.

SECTION

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92. Same subject.
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107. May occupy lands, &c. with the heirs or children.
108. If widow neglect to have dower assigned, heir, &c may proceed to have the same assigned on petition.
109. Proceedings thereon.
110. Dower recovered or assigned by collusion, &c. shall not prejudice heir, &c.
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112. Action by widow to recover her dower limited.
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Of whom widow may demand to have her dower assigned.

SECT. 66. The widow may demand of the heir or person having the next immediate estate of freehold or inheritance, or of the person who has the legal or equitable estate in lands in which she claims dower by virtue of any equitable interest which her husband had therein at the time of his death, or of any assignee or alienee of her husband, or of any person having the title to any lands or estate in which she claims dower, to have her dower in the estate of her husband assigned and set over to her according to the true intendment of law and the extent of her right to dower in such estate.

If dower not assigned within thirty days, may be assigned by commissioners, etc.

SECT. 67. If dower be not assigned to her satisfaction within thirty days next after demand as aforesaid, such dower may be assigned by three commissioners appointed by the proper court for that purpose.*

How she may proceed.

SECT. 68. Such widow, in order that she may recover her dower and have the same assigned, may proceed by bill in chancery; or she may proceed by petition and summons; or she may have her dower assigned by petition and publication of notice in some public newspaper, to the heirs and other persons interested.†

Proceeding by petition and summons.

Petition, where filed.

SECT. 69. If she proceed by petition and summons, she shall file her petition in the proper court of the county in which any of the real estate in which she claims dower, is situate.

Requisites of petition.

SECT. 70. Such petition shall set forth,

1. The death of the husband;
2. The lands in which she claims dower;
3. The estate or interest which her husband had therein;
4. The names and residence, if known, of the person or persons by whom such dower ought to be assigned;
5. The demand to have her dower assigned, of whom demanded, and the failure to assign the same;
6. The amount of damages claimed, if she demand damages, for withholding her dower.

Summons

SECT. 71. A summons specifying the object of such petition shall be served on the person or persons made defendant or defendants to such petition, and returned as writs in other cases.

Proceedings in case of infant.

SECT. 72. If any of such defendants be infants, the summons shall also be served on their guardian; and if such infants have no guardian, whether they reside in the state or not, the court, on application of the widow, shall appoint some discreet and substantial person for the sole purpose of appearing for and taking care of their interests in the proceedings; and the pro-

*Circuit and probate courts have concurrent jurisdiction in the assignment of dower. See ante page 665, section 6.

As to the lands, etc., of which the widow shall be endowed see ante page 428.

†The claim of the widow to dower in an equitable estate, under the statute, can be enforced only by a suit in chancery. *McMahan* v. *Kimball*, 3 Blackf. 1.—*Taylor* v. *McCrackin*, 2 Blackf. 260.

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ceedings may be stayed until such guardian can be appointed and a summons served upon him, unless he consent to appear without service thereof. ARTICLE 3.

SECT. 73. Such summons may be served personally on any party in this state, or by leaving a copy of the same with any person of proper age at the last residence of such party in case of his temporary absence. How summons may be served.

SECT. 74. If any such defendant be a resident out of the state, the service of such summons may be upon the tenant in the actual possession of the lands, if there be any such tenant and by publishing the same for three weeks successively in some newspaper printed in the county where such petition is pending, or if no newspaper be published therein, then in the county nearest thereto in which a paper is published. Service in case of non-resident defendant. Publication.

SECT. 75. The court, upon being satisfied that such summons has been served, or such publication of notice made, at least twenty days prior to the first day of the term at which such petition is to be heard, may proceed to the trial and determination of the matters and things therein contained. Trial, when had.

SECT. 76. The proceedings on such petition shall be at law; and the defendants or any defendant thereto, may demur or may plead any matters to such petition by several pleas, if necessary, to show that such widow is not entitled to dower either in whole or in part, in the lands specified in her petition or to defeat or diminish her interest or claim of dower therein; and further pleadings shall be conducted as in other actions until an issue or issues in law or in fact shall be joined, which shall be tried as in other cases. Proceedings shall be at law. Defendant may plead matters in bar, etc.

SECT. 77. Any person not named in the petition who has a legal, beneficial, or equitable interest in the estate of which the widow claims dower, liable to be affected by such claim, may, on leave of the court, appear to and answer, plead, or demur to said petition, and allege any and all matters of defence in fact and law which may defeat, bar, or diminish her claim or interest of dower in such estate. Person not named in the petition may appear, etc

SECT. 78. If the defendants make default, or if she obtain judgment for her dower, after trial or otherwise, the court shall appoint three discreet persons who are disinterested and not of kin to any of the parties, as commissioners to assign and set over to such widow her dower in the lands in which she is entitled to have such dower assigned.* If widow recover, three commissioners to be appointed.

SECT. 79. If any of the persons appointed commissioners or all of them shall die, resign, or neglect or refuse to serve, any such vacancy may be supplied by the court; and the person or persons thus appointed, shall take the oath and perform all the duties required of the original commissioner or commisioners. Vacancies how supplied.

*Where land in which the widow claims dower has been aliened by her husband, her dower therein shall be assigned according to the value of the land at the time of the assignment, excluding the increased value from improvements made by the alienee. *Smith* v. *Addleman*, 5 Blackf. 406.—And see *Wilson* v. *Oatman*, 2 Blackf. 223.

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Court may fix time for commissioners to report and may enlarge the time. May compel them to report, etc.

SECT. 80. The court appointing commissioners may fix the time for making their report, and may at any time, for sufficient reasons, enlarge the same; and may also, by order, compel such report or discharge the commissioners, or any of them, for failure or neglect of duty, and appoint others in their places, or in the place of any of them thus removed.

Their oath.

SECT. 81. Said commissioners shall take an oath before the court, or any justice of the peace, that they will faithfully and impartially discharge their duties as such commissioners, according to the best of their skill and judgment.

Shall assign by metes, &c. and make return in writing.

SECT. 82. They, or any two of them, at some convenient and early time after their appointment, shall proceed to assign and set off such dower, by sufficient metes and bounds, and shall make return thereof in writing, and acknowledge the same in open court.

Return, if accepted, &c. to be recorded.

SECT. 83. If such return be accepted and confirmed by the court, it shall be entered in the minutes of the court, as evidence of the due assignment of her dower, as therein set forth.

Dower shall be adjudged as assigned.

SECT. 84. The court shall thereupon adjudge such widow to have, enjoy, and possess the premises thus set apart and assigned by said commissioners, as and for her dower in the lands out of which the same has been thus assigned. *

Court may set aside such return, &c.

SECT. 85. The court, upon receiving the return of such commissioners, or at the time appointed for confirming the same, may, upon good cause shown, and upon such terms as may be deemed just and right, set aside such return; and, as often as may be necessary, continue the same, or appoint new commissioners, who shall proceed as herein required in the first instance, and make return in like manner; and if such other return shall not be set aside, it shall be confirmed and entered in the minutes of the court, as hereinbefore provided.

In case of several parcels of land, commissioners may assign any particular tract, &c. if the widow agree thereto.

SECT. 86. When there are several tracts of land of which a widow is dowable, if in any case she shall select, and express her willingness to accept any particular tract or parcel of such estate lying together, in lieu of the dower to which she might otherwise be entitled, the commissioners, if they deem it just and proper so to do, may assign and set off such tract or parcel of said lands to the widow, as and for her dower in the whole estate of her husband, or as and for her dower in such portion of said estate, as they may determine; and such assignment may be pleaded in bar of any further assignment of dower therein, by the heir, or by any alienee of the heir or husband.

Dower shall be set off by metes and bounds, when it can be done: if not,

SECT. 87. Said commissioners shall in every case assign and set off said dower by metes and bounds, when it can be so done without damage to the whole estate; but when the estate out of which dower is to be assigned is such, that a division by

* If a widow having an estate in dower marry, her husband, and those claiming under him, have a right to the enjoyment of the premises during the existence of the marriage. *Doe* v. *Brown*, 5 Blackf. 309.

If, after such marriage, the wife be divorced a vinculo matrimonii, the estate is thereby restored to her. Ibid.

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metes and bounds cannot be made, or cannot be made without damage to the whole estate, the dower may be assigned by said commissioners of the rents, issues, and profits thereof, to be had and received by the widow as a tenant in common with the other owners of the estate, or in such other manner as may best suit the interest of all the parties concerned.

dower may be assigned of the rents and profits.

SECT. 88. Said commissioners may employ a surveyor, with the requisite assistants, whenever it may be necessary to aid them in the admeasurement and assignment of such dower.

Surveyor, &c.

SECT. 89. Whenever a widow shall recover her dower in any lands upon petition and summons as aforesaid, against the person withholding dower, she shall in such action be entitled to recover damages for the withholding thereof, which may be levied and collected upon execution, as in personal actions.

Widow may recover damages.

SECT. 90. When, in any action whatever, the widow shall be entitled to recover damages for withholding her dower, such damages shall be equal to one-third part of the annual value of the mesne profits of the lands, or of the estate or interest which her husband had in the lands in which she shall be entitled to dower; to be estimated in a suit against the heirs and devisees of the husband from the time of his death, or in suits against persons claiming under such heirs or devisees, from the time such persons became the owners of such lands or estate; and in suits against other persons than such heirs, devisees, and those claiming under them, such damages shall be estimated from the time of her demanding her dower of such persons, subject in all cases to the provisions of the four next following sections.

Rules for the assessment of damages.

SECT. 91. If the person against whom any suit or proceedings for the recovery of such damages is instituted shall not have owned the lands during the whole time for which the widow is entitled to recover damages, she shall recover her damages against him for the time which he may have held the premises; and if in any such case she shall recover her dower or damages, she may afterwards maintain an action on the case against any other person who shall be liable for the rents and profits to which she may be entitled; but she shall not in any such suit or proceedings recover damages for withholding her dower for any time previous to demanding the same, where a demand is necessary to entitle her to damages.

Same subject.

SECT. 92. Such damages shall not be estimated for the use of any permanent improvements made on any lands by the alienee, heirs, or devisees of the husband, or by any person claiming title to such lands; nor for the mansion house, and messuage thereto belonging, while such house and messuage shall have been occupied by the widow, or under her control.

Same subject.

SECT. 93. Damages shall be estimated in all cases for the withholding of dower to the time of recovering judgment for such damages, but not to exceed six years in the whole, exclusive of the time subsequent to the commencement of the action.

Recovery of damages limited.

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Effect of recovery of dower, &c.

SECT. 94. In all cases in which the recovery or assignment of dower shall be by petition and summons, such recovery or assignment of dower, unless reversed in a superior court on appeal or writ of error, shall be final and conclusive as to all the parties in such petition upon whom such summons was personally served, or who appeared to such action, and as to all persons claiming under them, of her right to dower, and the extent thereof, in the lands in which such dower may have been assigned.

Infants and non-residents allowed a year, &c. to review assignment.

SECT. 95. Any person who was an infant at the time judgment for the assignment of dower was rendered, at any time within one year after arriving at full age, and any person a non-resident of the state who was not personally summoned, and who did not appear to answer such petition at any time within three years after such judgment may have a review on his petition of the assignment of dower, if it can be shown that the same has been inequitably or unjustly assigned, and have the same re-assigned; but after the expiration of the time as above limited, such re-assignment shall not be allowed.

In chancery: writ of seizin.

Proceedings in chancery, court may appoint commissioners;

SECT. 96. Whenever the proceedings for the recovery of dower shall be in chancery, the court may appoint commissioners to assign and set off such dower, who shall be governed in all respects in like manner as commissioners acting pursuant to the preceding provisions of this article.

And decree damages.

SECT. 97. The court may also, in such proceedings in chancery, enquire of and decree damages in favor of the widow for the withholding of her dower, and enforce the collection thereof as allowed by the provisions of this article in proceedings at law.

Writ of seizin.

SECT. 98. Whenever the widow shall recover her dower, in chancery, or by petition and summons, and the same shall have been duly set off and asssigned as aforesaid, she may have a writ of seizin, if necessary, awarded by the court to the sheriff of any county in which any of the lands awarded to her as her dower, by any decree or judgment of such court, may be situate, commanding the sheriff to whom any such writ may be directed, that he cause such premises to be delivered to such widow without delay, so that she may have full and peaceable enjoyment thereof.

Proceeding by publication.

Proceeding by publication.

SECT. 99. When the widow is entitled to dower in lands, and her right to such dower is not disputed, she may have the same assigned and set off, in pursuance of the following provisions of this article. *

* The proceeding by petition and publication of notice is similar to the mode of proceeding under previous statutes regulating the assignment of dower. It has been de-

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ARTICLE 3.

SECT. 100. She shall in such case give notice to the heirs or other person or persons owning lands, in which she claims dower, of her intention to apply to the circuit or probate court of the county where the greater part of the lands of her deceased husband lie, or in which administration of his personal estate has been granted, to have commissioners appointed to assign and set off her dower to which she may be entitled in the real estate of her husband. Notice to heirs, &c.

SECT. 101. Such notice shall be by publication for three weeks successively in some newspaper printed in such county, or if no newspaper be printed therein, then in some newspaper printed nearest thereto in this state, at least twenty days prior to the term of the court at which such application is intended to be made. Publication of notice.

SECT. 102. Upon her presenting her petition to the court for the appointment of commissioners to assign and set off her dower in the real estate specified in such notice, at the term specified therein, and it being made to appear to the satisfaction of the court, that publication of such notice has been made as required in the preceding section, and that, at least thirty days previous to giving such notice, she made demand to have her dower assigned, as provided in the first section of this chapter, except where the person or persons bound to make such assignment are infants, or not residents of this state, the court shall appoint three commissioners to assign and set off her dower in the lands specified in such petition and notice. Proceedings on the petition. Commissioners

SECT. 103. When such commissioners are appointed, they shall be governed in all respects in assigning said dower and making their report, as above herein required of commissioners where the proceedings are by petition and summons, and their return may in like manner be confirmed or set aside, and like proceedings thereon had. Commissioners how to proceed.

SECT. 104. If, at the time of such assignment of dower, any of the persons interested therein were non-residents of the state, they may have the confirmation thereof set aside, and a re-assignment of such dower made, for any good cause shown to the court, within three years after such assignment. Non-residents may have a re-assignment, &c.

SECT. 105. If, at the time of such assignment, any of the persons interested therein were infants, they may have the proceedings opened, and such dower re-assigned, for like good cause shown, within one year after arriving at full age. Infants may have re-assignment.

Miscellaneous provisions.

SECT. 106. Until her dower be assigned, it shall be lawful for the widow to remain and continue in the mansion house, and the messuage thereunto belonging, of her husband, Widow may occupy mansion house, &c. until dower assigned.

cided by the supreme court, that such assignment of dower by commissioners limits the extent of dower, but does not confer a legal title to it. See *M'Mahan* v. *Kimball*, 3 Blackf. 1.

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for the space of one year from her husband's death, without being liable to pay any rent for the same.*

May occupy lands, &c. with the heirs or children.

SECT. 107. But the widow may continue to occupy any lands in which she is entitled to dower with the children, or other heirs of the deceased, or receive one-third part of the rents, issues, or profits thereof, so long as the children or heirs do not object thereto, without having her dower assigned; and whenever any heir or heirs shall think proper to hold or occupy their share or shares in severalty, the widow may claim her dower, and shall have the same assigned to her according to law. †

If widow neglect to have dower assigned heir, &c. may proceed to have the same assigned.

SECT. 108. In case any widow shall fail or neglect to apply for the assignment of her dower, after the expiration of a year from the death of her husband, and after one month's notice in writing, requiring her to make demand of and institute proceedings for the assignment thereof, it shall be lawful for the heir, the person having the next immediate estate of inheritance, or other person against whom her claim of dower may be enforced, or the guardian of any such heir or person to proceed by publication of notice and petition for the assignment of her dower, as above provided in the previous sections of this article.

Proceedings thereon.

SECT. 109. Upon proof of publication of such notice, at least twenty days before the term of the court at which such petition shall be presented, commissioners to assign dower may be appointed, and the like proceedings had thereupon, as in other proceedings for the assignment of dower.

Dower recovered or assigned by collusion, &c. shall not prejudice heir, &c.

SECT. 110. Where a widow having any right to dower shall, during the infancy of the heirs of the husband, or of any of them, in any suit or proceedings commenced either by the widow, or by any other person, for the assignment of her dower, recover by the default or collusion of the guardian of such minor heir, such heir shall not be prejudiced thereby; but when he comes of full age he shall have an action against the widow, to recover the lands which may have been wrongfully awarded to her, or he may have the suit and proceedings opened up, for good cause shown, and may have a re-assignment of such dower.

Action to controvert widow's right of dower limited.

SECT. 111. No widow's right or claim of dower, after the lapse of twenty years from the time the assignment of her dower, in any suit or proceedings for the recovery or assignment thereof has been confirmed, and who has been in the peaceable and quiet enjoyment thereof during said time, shall be controverted or defeated by any adverse claimant or title.

* The term 'messuage,' as used in the statute regulating dower, may include a few acres of land adjacent to a dwelling house, but not a whole farm. *Grimes* v. *Wilson*, 4 Blackf. 331.

If a widow enter on the lands of her deceased husband, other than the "mansion house and messuage thereunto belonging," and appropriate the proceeds to her own use, she is a wrong-doer, and amenable to the proprietor of the land for the rents and profits. Ibid.

† See the note to the last preceding section.

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Action by widow to recover her dower limited.

SECT. 112. A widow shall not demand or recover her dower after the expiration of twenty years from the death of her husband, but if at the time of such death she be under the age of twenty-one years, or insane, the time during which such disability continued shall not form any part of said twenty years.

Compensation of commissioners, surveyor, &c.

SECT. 113. The commissioners appointed to assign dower shall each receive one dollar and fifty cents per day for every day employed therein; and any surveyor and his assistants necessarily employed by such commissioners shall receive such compensation as the court shall allow; and the costs of court shall be the same as are allowed in other cases for similar services; all costs and expenses in such proceedings shall be paid by such person or persons, parties to the suit, as the court may adjudge or order.

Costs.

ARTICLE IV.

Of the partition of lands owned by several persons.

SECTION

114. Who may have partition.
115. Where petition shall be filed.
116. How court may cause partition to be made.
117. Petition shall set forth names of parties, &c.
118. Petition, how filed; summons, how served; non-resident, how notified.
119. Cause, when to be tried.
120. Guardian ad litem.
121. Defence may be pleaded, &c.; issues, how tried.
122. Amendment of pleadings; may add name of party omitted.
123. Proceedings in case a party appear who is not named in the petition.
124. Same subject.
125. Interlocutory judgment.
126. Partition shall not be adjudged contrary to intention of testator.
127. Three commissioners appointed to make partition.
128. Their oath.
129. They shall make partition, &c.
130. Two or more may have their shares set off together.
131. Widow may have her dower set off by the commissioners.

SECTION

132. Guardians may appear and act for their wards.
133. Advancements.
134. Report of commissioners.
135. Confirmation.
136. Court may set aside report.
137. If land cannot be divided court may order sale thereof.
138. Terms of sale, &c.
139. Proceedings when part of the lands divided and part sold.
140. Same subject.
141. Deed to purchaser.
142. Proceeds of sale paid to those entitled thereto.
143. Two commissioners may act, &c.; vacancies.
144. Powers, &c. of a commissioner appointed to fill a vacancy.
145. Proceedings not to abate by death of party, &c.
146. Same subject.
147. Same subject.
148. Compensation of commissioners, surveyor, &c.
149. How court shall award costs.
150. Who may obtain a review of partition, &c.

Who may have partition.

SECT. 114. All persons holding lands as joint tenants or tenants in common, may be compelled to divide the same either by writ of partition at common law or by proceedings in chancery, or in the manner provided in this article.*

* The more usual mode of enforcing partition in England now, is by a resort to the courts of equity. See *Lease* v. *Carr*, 5 Blackf. 353.

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Where petition shall be filed.

SECT. 115. Any one or more of the persons so holding lands may apply by petition to the circuit or probate court of the county in which the lands lie, for a partition of the same; or when the lands lie in several counties, such petition may be filed in the court of any one of the counties in which any part of such lands are situate.

How court may cause partition to be made.

SECT. 116. The said courts are hereby empowered to cause partition to be made by setting off the share or shares of those who desire the same to be done, whether petitioners or defendants, and the residue of the premises shall remain for the person or persons entitled thereto, subject to a future partition among them, if there be more than one person so entitled.

Petition shall set forth names of parties, &c.

SECT. 117. Every petition for partition shall set forth the rights and titles so far as known to the petitioners, of the several parties interested, together with a description of the premises.*

Petition, how filed.

SECT. 118. Such petition may be filed either in term time or in vacation, and a summons to appear and answer thereto shall be issued by the clerk and served personally on each of such parties, if they shall be found within the state, or by leaving a copy thereof at their last place of residence; or if any of the said defendants are non-residents of the state, or if their names be unknown to the petitioner, and so alleged in his petition, and such non-residence or want of knowledge be verified by affidavit, the clerk shall order notice of the pendency of such petition to be given for three weeks successively in some newspaper printed in such county, or if none be printed therein, then in a newspaper printed in this state nearest thereto.

Summons, how served.

Non-resident, how notified.

Cause, when to be tried.

SECT. 119. Upon it appearing to the court that such summons has been served ten days before the first day of the term, and when publication as aforesaid is required, that the same has been made thirty days previous to such term, the court shall proceed to hear and determine such petition.

Guardian ad litem.

SECT. 120. The court may assign a guardian ad litem for any infant or insane defendant in the same manner as such guardians are admitted for an infant at common law.

Defence may be pleaded, &c.

SECT. 121. Any person interested in such estate may appear and plead, either separately or jointly with any other defendant, any matter tending to show that the petitioner ought not to have partition as prayed for, either in whole or in part; and the replication and further pleadings shall be conducted as in actions at common law, until an issue or issues in law or in fact

Issues, how tried.

* A petition for partition of real estate should show the nature and extent of the interest of the petitioner in the land, and that he held it in common with the defendants, whose interests should also be stated, if known, to the petitioner. *Lease* v. *Carr*, 5 Blackf. 353.

Where the defendants in such case do not appear, the petitioner, to justify the appointment of commissioners to divide the land, should show his title to the court, and prove that the defendants are common proprietors with him of the land. Ib.

The decree for a partition should declare the petitioners' proportion of the land; and it should also establish the rights of the other parties in the same, unless it appear that proof of their rights was not in the power of the petitioner. Ib.

The commissioners in such case should be directed to divide the land according to the decree, and to deliver and assign to each party his share. Ib.

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shall be joined, which shall be tried and determined as in other cases. ARTICLE 4.

SECT. 122. Amendments of the petition or other pleadings of the parties may be made in like manner as in other suits at law, and on like terms; and if at any stage of the proceedings it shall appear that any person interested has not been made a party, the court may permit his name to be inserted and the cause to be continued until he can be notified according to law of the pendency of such petition. Amendment of pleadings. May add name of party omitted.

SECT. 123. If any person who is not named in the petition shall appear and plead as a defendant, or allege any claim or title to the premises, or any part thereof, the petitioner may reply that such person has no estate or interest in the premises, and may pray judgment if he or she shall be admitted to object to the partition; and the petitioner may likewise reply in answer to such plea any other matter, in like manner as he might have done if he had not disputed such person's right to appear. Proceedings in case a party appear who is not named in the petition.

SECT. 124. If it shall appear that such person has no estate or interest in the lands, the matter of his or her plea, allegation, or objection to such partition shall be no further inquired of. Same subject.

SECT. 125. If upon the trial of any issue, or upon default, or by the confession or admission of the parties it shall appear that partition ought to be made, the court shall award an interlocutory judgment that partition shall be made, specifying therein the share or shares which shall be assigned in such partition. Interlocutory judgment.

SECT. 126. Such court shall not order or affirm any division of any real estate contrary to the intention of any testator, as expressed in his will. Partition shall not be adjudged contrary to intention of testator.

SECT. 127. Upon judgment of partition being awarded, the court shall appoint three disinterested freeholders residents of the county in which such court is held, not of kin to any of the parties, to make partition of such real estate pursuant to the judgment of the court. Commissioners to make partition.

SECT. 128. Before proceeding to the discharge of their duties such commissioners shall take an oath for the faithful and impartial performance of the trusts reposed in them, which oath if taken in open court, shall be entered in the order book, and if not, the same shall be indorsed on the warrant issued to them to make such partition. Their oath.

SECT. 129. Said commissioner shall proceed to make partition of such lands among those entitled thereto in pursuance of the judgment and directions of the court according to their respective rights. Shall make partition.

SECT. 130. If there be several persons interested, any two or more of them may have their shares set off together, or the shares of each may be set off in severalty, at their election. Two or more may have their shares set off together.

SECT. 131. If the widow of any deceased person shall have established in such proceedings for partition her right to dower, or if the same shall be admitted in such proceedings, the commissioners, if required by the order of the court so to do, shall assign and set over to her her dower of and in said lands, or any Widow may have her dower set off by the commissioners.

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part thereof, as in other cases of the assignment of dower, and shall return the same as a part of their proceedings.

Guardians may appear and act for their wards, &c.

SECT. 132. The guardians of all minors are hereby authorized and empowered, under the direction of the proper court, on behalf of their wards to do and perform all matters and things respecting the division of any real estate, in the same manner and with like effect and validity if conducted in good faith as the same could be done by such wards were they of full age.

Advancements.

SECT. 133. When any of the heirs of a person dying intestate shall have been advanced in the lifetime of such person by a portion or settlement in lands or otherwise, such portion or settlement, after it has been ascertained and adjudged by the court according to the rules prescribed by law for the adjustment of advancements, shall be taken into consideration in the assignment of the share of the heir advanced so as to make the shares of all the heirs equal, as near as can be estimated, according to their respective rights.

Report of commissioners.

SECT. 134. When the commissioners shall have completed such partition they shall make report thereof under their hands to the court, specifying particularly the lot or part assigned to each person entitled to such partition, mentioning in such report which of the persons are minors, if any there be.

Confirmation.

SECT. 135. Such report shall be acknowledged by the commissioners making the same, in open court, and if confirmed by the court shall be spread upon the order book, and judgment shall thereupon be rendered by the court that such partition be firm and effectual for ever as among such parties.

Court may set aside report.

SECT. 136. The court, however, before confirmation, may set aside such return for any good cause shown, and commit the same anew to the same or any other commissioners to be appointed and qualified as aforesaid, whereupon the same proceedings shall be had as are before directed.

If land cannot be divided, court may order sale thereof

SECT. 137. When the whole or any part of the lands of which partition is demanded, are such that they cannot be divided without damage to the owners, and the commissioners shall report such fact to the court at the same or any other term after their appointment, the court, in its discretion, may make an order for the sale of the whole or of such part of said premises as the commissioners shall have reported not susceptible of a just and equitable partition without injury to the owners aforesaid.

Terms of sale, &c.

SECT. 138. The court shall direct such sale to be at public vendue, on such terms and conditions, and subject to such just restrictions as to the court shall seem right and safe.*

Proceedings where part of the lands divided and part sold.

SECT. 139. If such sale be ordered and partition be made of any part of the real estate specified in the petition, such partition may be confirmed, or a new partition ordered, as in case partition had been made of the whole; and, if confirmed, the

* A sale of land having been made under an order of the probate court, on a petition for partition, it was held that a court of chancery could not correct a mistake as to the description of the land, in the notice, petition, order of court, etc. *Mahan* v. *Reeve*, 6 Blackf. 215.

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shares of the parties set off therein shall be as valid and effectual as if the whole estate had been divided.

Same subject.

SECT. 140. The shares which are thus divided may be the full portions of the parties to whom the same are assigned, in in the real estate specified in the petition, of which partition is made; and where such partition thereof is confirmed by the court, the residue of such estate not susceptible of partition, and the proceeds thereof, shall be fully and completely discharged and released thereby from all right, title, interest, and claim of the parties to whom such partition shall have been made and confirmed.

Deed to purchaser.

SECT. 141. When the commissioners shall show to the court that the purchase money for the premises sold by order of the court as aforesaid, is fully paid, and they shall have accounted to the court therefor, such court shall order such commissioners to execute the proper conveyances to the purchaser or purchasers, which shall operate as an effectual bar, both in law and equity, against such owners with like force and effect as if the same had been executed by such owners.

Proceeds of sale paid to those entitled thereto.

SECT. 142. The moneys arising from such sale after the payment of the costs and expenses with which the same is justly chargeable, shall be paid by such commissioners to the persons entitled thereto, according to their respective shares, under the direction of the court.

Two commissioners may act &c. Vacancies.

SECT. 143. Any two of the persons named as commissioners may do and perform the duties required by this article; and in case of the death, resignation, removal, or refusal to act of any such commissioner or commissioners, at any stage of the proceedings, the court shall fill such vacancy.

Powers, &c., of commissioners appointed to fill vacancy.

SECT. 144. Such death, resignation, removal, or refusal shall not affect or invalidate the previous acts of such commissioners, and the person or persons appointed to succeed any commissioner or commissioners, shall take up and continue the proceedings; and when completed by the requisite number authorized to do and perform the same, shall be as valid and effectual to all intents and purposes, as if the same had been done and transacted by the commissioners first appointed.

Proceedings not to abate by death of party.

SECT. 145. Proceedings for the partition of land shall not abate by the death of one or more of the plaintiffs or of the defendants.

Same subject.

SECT. 146. If, in such case, one or more of several plaintiffs die, the proceedings shall be continued in the name of the survivors, if the interest in the lands survive or descend to them. If the interest of any such deceased plaintiff in such lands pass to other persons, they may be made defendants or plaintiffs, as the case may require, by rule of court served upon them in such manner as the court shall direct, and the case shall proceed as if they had been made plaintiffs or defendants originally.

Same subject.

SECT. 147. If one or more defendants in partition die, and the interest of such deceased person shall survive or descend

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to the remaining defendants, the proceedings shall be continued against them. If such interest shall pass to other persons they may be made defendants in like manner as is prescribed in the last preceding section, or by process as in the commencement of the proceedings.

Compensation of commissioners, surveyor &c.

SECT. 148. The commissioners so appointed shall be entitled to receive each one dollar and fifty cents per day for their services rendered as aforesaid, together with such other sum as the court shall deem reasonable, for surveying, marking, chain-carrying, platting, and for the execution of the proper conveyances where the same are necessary.

How court shall award costs.

SECT. 149. The court shall award the costs and charges specified in the last section, and all other costs against the persons among whom the estate mentioned in the petition, shall have been divided in such proportion as to the court shall seem just and right; and judgment in favor of the persons entitled to such costs and charges shall be rendered against the parties adjudged liable therefor.

Who may obtain a review of partition.

SECT. 150. Any person not served with a summons may, within one year after such partition is confirmed, appear and open the proceedings and obtain a rehearing or review thereof, upon showing sufficient cause; and any infant, whose guardian did not attend and approve such partition, and any feme covert or insane person may also, within one year after the removal of his or her disability, have a review of such partition upon showing sufficient cause.

ARTICLE V.

Of proceedings before justices of the peace against tenants holding over.

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151. Of the determination of certain tenancies.
152. Notice to quit when tenancy from year to year.
153. Notice in other cases.
154. To whom notice given.
155. Demise for a definite term, no such notice necessary.
156. Other cases in which notice to quit not necessary.
157. How notice given.
158. How to proceed to recover possession.
159. Complaint.
160 Summons: time of trial: jury.
161. Summons, how served.

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162. Subpœnas for witnesses: by whom served: penalty for witness failing to attend.
163. Continuances.
164. Trial.
165. Challenge of jurors: talesmen.
166. Parties may amend pleadings.
167. Jury kept together until they agree: or if they cannot agree, may be discharged and another trial had.
168. On trial, plaintiff must prove service of notice.
169. Judgment for plaintiff: writ on such judgment.
170. Writ, how executed.
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SECTION
172. Judgment for defendant.
173. Appeal: appeal bond.
174. Appeal, how tried in the circuit court.
175. Judgment in circuit court: writ thereon.
176. Effect of appeal: if appeal dismissed, clerk of circuit court to certify, &c.
177. Damages, to what time assessed.
178. Defendant may suggest that the right to the premises is in some other person.
SECTION
179. If such person assert his claim, proceedings shall be stayed, on his giving bond to prosecute an action at the next circuit court.
180. If such person fail to prosecute, or if judgment be against him, justices may proceed.
181. Tenant's right to emblements not impaired.
182. This article restricted.
183 Proceedings in case either of the justices fail to act, &c.

Of the determination of certain tenancies.

SECT. 151. When any lands, tenements, or hereditaments, are held or possessed under any landlord by any tenant at will, or from year to year, expressly or constructively, or for a period indefinite and uncertain, such landlord, if desirous of obtaining possession of the premises thus held or possessed, may determine such tenancy by giving the requisite legal notice to quit the possession thereof.

Notice to quit, when tenancy from year to year.

SECT. 152. If such tenancy is from year to year, such notice to quit must be given at least three months previous to the end of the current year.

Notice in other cases.

SECT. 153. In the other cases specified in the first section of this article, such notice to quit may be given at any time, at least three months previous to the time it is intended to determine such tenancy, unless a shorter period be sufficient by law.*

To whom notice given.

SECT. 154. Such notice to quit shall be given to the tenant in possession, whether he be the original tenant of said premises or the heir, devisee, assignee, or sub-lessee of such tenant, or his personal representative.

Demise for a definite term, no such notice necessary.

SECT. 155. Where any lands, tenements, or hereditaments, are demised for a certain and definite term, the right of the tenant to the possession thereof shall determine at the expiration of the term specified in such demise, and no notice to quit shall be necessary.

Cases in which notice to quit not necessary.

SECT. 156. Nor shall such notice to quit be necessary in the case of a tenant at will who commits waste, nor of a tenant at sufferance, nor in any case where there does not exist between the parties, either expressly or constructively, the relation of landlord and tenant.

How notice given.

SECT. 157. Any notice required by the preceding sections of this article may be served by delivering the same to the tenant of the premises, or if he cannot be found, by delivering the same to some person of proper age and discretion residing on the premises, having first made known to such person the contents thereof.

*See ante page 441, sections 142, 143, 144, 145.

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How to proceed to recover possession.

SECT. 158. Whenever any landlord, his heirs, devisees, assignees, or personal representatives, shall have determined any tenancy by notice to quit as above prescribed, or whenever any landlord, lessor, or rightful owner of any lands, tenements, or hereditaments, shall be entitled to the possession thereof, according to the provisions of the previous sections, any such landlord, his heirs, devisees, assignees, or personal representatives, or the agent of any of them, may have the person against whom he may properly proceed removed from such premises, on complaint before any two justices of the peace of the county where such premises are situate.

Complaint.

SECT. 159. Such complainant shall specify the matters relied on for the removal of any such tenant or person against whom proceedings are instituted, and the premises claimed shall be designated with reasonable certainty.

Summons.

SECT. 160. Said justices of the peace shall forthwith issue a summons, directed to the sheriff of such county, commanding him to summon as well the tenant or person against whom such complaint has been filed, that he be and appear before them, at a specified place, in the township in which such premises are situate, not less than five nor more than ten days after the issuing thereof, as also twelve householders of the county as jurors, to meet at the same time and place, for the trial of the questions arising under such complaint.

Time of trial.

Jury.

Summons, how served.

SECT. 161. Such summons may be served on the tenant of the premises, or if he cannot be found, by delivering a copy thereof to some person of proper age and discretion, residing on the premises in controversy, or if there be no such person to be found thereon, such warrant may be served by affixing a copy thereof on a conspicuous and public part of said premises, where it may be conveniently read.

Subpœnas for witnesses.

SECT. 162. Either of the justices of the peace before whom such cause is pending, may, at the request of either party, issue subpœnas for witnesses, to appear and testify on the trial thereof, which may be served by the party procuring the same, or by any constable, or by the sheriff, or his deputy; and every person duly served with such subpœna, who shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to testify or answer upon oath, touching the matters in controversy, shall be proceeded against and subject to the fines and penalties provided by law for similar offences in civil causes pending before a justice of the peace.

By whom served.

Penalty for witness failing to attend.

Continuances.

SECT. 163. Said justices may, upon the motion of either party, adjourn the hearing of such cause, for the purpose of enabling such party to procure his testimony, whenever it shall appear to be necessary; but such adjournment shall in no case exceed ten days, and shall only be allowed for the same causes and on a similar affidavit as are required for the continuance of a civil cause pending before a justice of the peace.

Trial.

SECT. 164. If, at the time and place appointed in said summons, it shall appear that due service thereof has been made as

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above required, the jury shall be empannelled and sworn well and truly to hear, try, and determine, the matters in difference between the parties.

Challenge of jurors.

SECT. 165. Before the jury is sworn, either party shall have the same right of challenging any of said jurors, and for the same causes as in the circuit courts of this state; and said justices may order any deficiency in or want of such panel of jurors to be supplied from the bystanders, or others, householders or freeholders of said county, as in other courts.

Talesmen.

Parties may amend pleadings.

SECT. 166. Either party, before entering into trial, shall have the same right of amending his cause of action, or of defence, or other pleading, as is allowed by law in suits pending before a justice of the peace.

Jury kept together until they agree:

SECT. 167. After hearing the allegations and proofs of the parties, the said jury shall be kept together until they agree on their verdict, by the sheriff, or one of his deputies, or by a constable, or some proper and disinterested person, appointed by the said justices of the peace for that purpose, who shall be sworn to keep such jury, as in like manner is required of officers having charge of juries in courts of record; and if such jury cannot agree, after being kept together for such time as such justices shall deem reasonable and proper, they may discharge such jury, issue a new precept for another jury, and continue such cause for trial at some subsequent time, not exceeding five days.

Or if they cannot agree, may be discharged, and another trial had.

On trial, plaintiff must prove service of notice.

SECT. 168. No verdict shall be rendered for the person claiming such premises, in any case in which notice to quit is required by the provisions of this article, unless a copy of such notice be produced to the jury trying such cause, and due service thereof proved by a disinterested witness.

Judgment for plaintiff.

SECT. 169. If the verdict of the jury be in favor of the plaintiff, the said justices shall render judgment thereon that said plaintiff have possession of said premises delivered to him, and that he recover the damages assessed by said jury, and also his costs; and if thereto required by said plaintiff, his agent or attorney, shall issue a writ directed to the said sheriff, commanding him to deliver said premises to said plaintiff, by removing the defendant and his goods and chattels therefrom, or otherwise, so that the plaintiff have complete possession thereof, and also to levy such damages and costs of the goods and chattels of said defendant, as the same might be done by virtue of a writ of fieri facias directed to such officer.

Writ on such judgment.

Writ, how executed.

SECT. 170. Execution of said writ, as relates to the delivery of possession, shall be made by the sheriff, forthwith after the receipt thereof; and the levy by virtue thereof to collect the said damages and costs, the sale of the property executed, and the return of such writ, shall in all respects be governed as like cases of writs of fieri facias issued by a justice of the peace in a civil cause; and said writ may be returned to either of said justices.

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SECT. 171. If said sheriff shall not be able to levy said damages and costs by said writ, by the proper return day thereof, a writ of fieri facias may be issued, with like force and effect and governed in all respects as such first writ, so far as the same is intended to operate as a writ against the property of the defendant.

Judgment for defendant.

SECT. 172. If the verdict of the jury shall be in favor of the defendant, judgment shall be rendered thereon that he recover his costs of said plaintiff; and a writ of fieri facias to levy the same, at the request of such defendant, shall be issued by said justices to the said sheriff, who shall execute and return the same, as in the case of a similar writ in favor of the plaintiff.

Appeal.

SECT. 173. An appeal shall be granted to either party on any judgment rendered by said justices of the peace, to the proper circuit court, under such regulations and restrictions, and in like manner as are required in appeals from the judgment

Appeal bond.

of a justice of the peace; and the appeal bond shall be filed with said justices, and sent up to the circuit court, with the other papers of the cause, and shall be conditioned that such appellant, if the plaintiff, will duly prosecute his said appeal, and pay the costs which shall be adjudged against him by said court; and if the defendant is the appellant, that he will duly prosecute his said appeal, and pay the damages and costs which may be adjudged against him in said court.

Appeal, how tried in the circuit court.

SECT. 174. Such appeal shall stand and be tried in the circuit court in like manner as is provided for the trial and determination of causes appealed from a justice of the peace; and all provisions of law for the amendment of the pleadings, papers, causes of action, and statements of the parties, and for supplying any deficiency therein in causes appealed from a justice of the peace to the circuit court, shall be applicable to any such appeal, so far as the same can be in such circuit court.

Judgment in circuit court.

SECT. 175. Such court shall render the same judgment in such cause as the said justices of the peace are required to render, according as the matters in controversy are found in favor of the plaintiff or defendant, and similar process shall be issued on such judgment, at the request of either party, by the clerk

Writ thereon.

of said court, and shall be executed as above directed when issued by said justices of the peace, and return thereof shall be made in the manner prescribed for writs of fieri facias issued out of such court.

Effect of appeal.

SECT. 176. Such appeal shall supersede all further proceedings on the judgment rendered by such justices of the peace, nor shall such judgment be of any further force or effect, except such judgment shall have been rendered for the plaintiff, and the defendant shall have appealed, and his appeal shall be dis-

If appeal dismissed, clerk of circuit court to certify, &c.

missed by the circuit court, in which case the clerk shall certify such dismissal, under the seal of his court, to said justices; whereupon execution may be issued and all other proceedings had on such judgment as if such appeal had never been taken.

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Damages, to what time assessed.

SECT. 177. In estimating damages for the detention of said premises, the jury or the court, as the case may be, shall estimate the same to the time of the finding of such damages before the said justices of the peace or in the circuit court.

Defendant may suggest that the right to the premises is in some other person.

SECT. 178. If the defendant before the trial of such cause before said justices of the peace, shall make and file with them an affidavit denying the plaintiff's right, claim, or title to the possession of said premises, and shall allege therein that the right to such possession is in some other person whom he shall name, stating briefly the nature of such right or title, said justices of the peace shall adjourn the trial of the cause for four days, and shall direct a copy of said affidavit to be served on the person therein named as having such right to the possession of said premises, his agent or attorney, with a notice to be and appear before said justices on the day to which such cause stands adjourned, to assert his right, claim, or title to the possession of the premises aforesaid.

If such person assert his claim, proceedings shall be stayed, on his giving bond to prosecute an action in the circuit court.

SECT. 179. If on such day said person, his agent or attorney, shall appear and make and file an affidavit before said justices that he verily believes he is entitled to the possession of said premises, setting forth in a brief manner the nature of his right, title, or claim to said possession, or if his agent or attorney shall appear and make and file such affidavit, and if such person, or his agent or attorney, shall file at such time and place a bond in the penal sum of two hundred dollars, with good and sufficient surety to be approved by said justices, conditioned that such person will duly prosecute his right, claim, or title to the possession of the premises aforesaid at the next circuit court of said county, said justices shall enter the same on their proceedings, and shall direct such proceedings to be stayed.

If such person fail to prosecute, or if judgment be against him, justices may proceed.

SECT. 180. If the person whose claim, right, or title to the possession of said premises has been thus interposed, fail to prosecute such right, claim, or title at the next term of said court, or having instituted proceedings in that behalf, the judgment or decree shall be rendered against him, the clerk of the circuit court shall certify such fact under the seal of said court to said justices of the peace, who shall proceed, if requested by the plaintiff, to hear and determine said cause instituted before them, and render judgment therein and issue execution as if no such proceedings had been instituted in said circuit court, having first appointed a day for such trial, and caused notice thereof to be served on the defendant, his agent, or attorney.

Tenant's right to emblements not impaired.

SECT. 181. Nothing contained in this article shall be construed to defeat or impair the right of any tenant to emblements and any growing crop to which he would be entitled if this act had not been passed.

This article restricted.

SECT. 182. Nothing contained in this article shall be construed to impair the rights of any landlord or lessor, or of any tenant or lessee in any case not herein provided for.

Proceedings in case either of

SECT. 183. Whenever it shall happen that either of the justices of the peace before whom the complaint specified in this

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the justices fail to act, &c.

article may be filed, shall die or go out of office before the final determination thereof, the successor or justice to whom the business of any such justice of the peace shall be transferred, shall proceed in such cause as if he had been one of the justices before whom the same was originally instituted; and if there be no such justice as above specified who can take part in the adjudication of such complaint, the remaining justice may select any competent justice of the peace of the county, who shall proceed in such cause in like manner as above provided.

ARTICLE VI.

Of forcible entry and detainer.

SECTION		SECTION	
184.	Trial for forcible entry and detainer by jury before two justices.	190.	Form of verdict for plaintiff.
185.	Complaint—warrant for jury.	191.	If not a full jury, panel how filled—jury shall sign verdict.
186.	Form of warrant.	192.	Judgment for plaintiff—form of writ of restitution.
187.	Summons.	193.	Appeal.
188.	Summons, how served.	194.	Three years' quiet possession, etc., not affected.
189.	Complaint laid before jury—foreman's oath—jurors' oath.		

Trial for forcible entry and detainer by jury before two justices.

SECT. 184. Two justices of the peace shall have authority to inquire, by a jury as hereinafter directed, as well against those who make unlawful and forcible entry into lands or tenements, and with a strong hand detain the same, as against those who, having lawful and peaceable entry into lands or tenements, unlawfully and by force and strong hand hold the same; and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that such lands or tenements are held and detained with force and strong hand, or that such lands or tenements, after a lawful entry, are held unlawfully and with force and strong hand, then such justices shall cause the party complaining to have restitution thereof.*

Complaint.

SECT. 185. When complaint shall be formally made in writing to any two justices of the peace, of any unlawful and forcible entry into any lands or tenements, and detainer of the same, or of any unlawful and forcible detainer of the same after a peaceable entry, they shall make out their warrant under their hands and seals, directed to the sheriff or coroner, as the case may be, of the same county, commanding him to cause to come before them, twelve good and lawful jurymen of the same county to inquire into such unlawful and forcible entry and detainer, or unlawful and forcible detainer.†

Warrant for jury.

* This summary and extraordinary proceeding to obtain possession of real estate by the interference of two justices of the peace, is founded upon statute, both in *England* and in this country, and is only authorized where the entry or detainer is, in its nature, forcible and violent. In ordinary cases—those of entries or detainers peaceable but unlawful — the injured party is left to his action of ejectment, etc. *Boxley* v. *Collins*, 4 Blackf. 320.—And see *Evill* v. *Conwell*, 2 Blackf. 133.—*Barton* v. *Osborn*, 6 Blackf. 145.—2 Chitt. Gen. Prac. 234.

† The complaint filed with the justices, in cases of forcible entry and detainer, cannot

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ARTICLE 6.

Form of warrant.

SECT. 186. Such warrant shall be substantially in the following form:

State of Indiana, ——— county, sct. To the —— of —— county, greeting:

Whereas, complaint has been made to the undersigned, two justices of the peace for the county aforesaid, by E F of ———, in the county aforesaid, that G H of ——— on the ——— day of ———, 18——, at —— aforesaid, with force and arms and with strong hand, did unlawfully and forcibly, enter into and upon a tract of land of him, the said E F, in ——— aforesaid, containing ——— acres, bounded as follows, to-wit: (or into the messuage or tenement of him, the said E F, as the case may be) and him, the said E F, with force and strong hand as aforesaid, did expel and unlawfully put out of the possession of the same, and does him, the said E F, unlawfully, forcibly, and with strong hand, deforce and still keep out of the possession thereof; (or if it be a forcible detainer only, then the entry shall be described, and the detainer inserted as follows: and the said G H does unlawfully, unjustly, and with strong hand, deforce and still keep him, the said E F, out of the possession of the same;) you are therefore commanded, in the name and by the authority of the state of Indiana, to cause to come before us, upon the ——— day of ———, 18———, at the hour of ———, and at ———, in the county aforesaid, twelve good and lawful jurymen of your county, to be empannelled and sworn to inquire into the unlawful and forcible entry and detainer, (or the unlawful and forcible detainer, as the cass may be) before described. Given under our hands and seals the ——— day of ———, 18——.

A B, [SEAL.]
C D, [SEAL.] } Justices of the peace.

Summons.

SECT. 187. Said justices shall make out a summons to the party complained against, substantially in the form following:

The state of Indiana, sct. To the ——— of ——— county, greeting:

You are hereby commanded to summon G H, of ———, to appear before the undersigned, two justices of the peace for the county of ——— aforesaid, at the hour of ———, on the —— day of ———, at ———, in the county aforesaid, then and there to answer to ———, and defend against the complaint of E F, to us exhibited, wherein he complains that, (here recite the complaint,) and make to us a return of this summons, with your proceedings therein, on or before the said day. Given under out hands and seals the ——— day of ———, 18——.

A B, [SEAL.]
C D, [SEAL.] } Justices of the peace.

be objected to for mere matters of form. *Moore* v. *Read*, 1 Blackf. 177.—See *Test* v. *Devers*, 2 Blackf. 80.

The complaint in a case of forcible entry and detainer, must show that the land is within the county, and that the detainer is unlawful. *Boxley* v. *Collins*, 4 Blackf 320.

The complaint in such proceeding showed that the plaintiff had bought the land of the defendant; that the latter, by agreement with the plaintiff, continued in possession until a certain day, and held over that day by force and strong hand. *Held*, that the complaint was sufficient. Ibid.

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Summons, how served.

SECT. 188. Such summons shall be served upon the defendant, or a copy thereof left at his usual place of residence, seven days before the day appointed by the justices for the trial, exclusive of the days of service and trial; and if after the service of such summons, the party do not appear to defend, the justices shall proceed to the inquiry in the same manner as if he were present.

Complaint laid before jury.

SECT. 189. When the jury shall appear, the justices shall lay before them the complaint exhibited, and shall administer the following oath to the foreman and to the other jurors:

Foreman's oath.

Foreman's oath

You, as foreman of this jury, do solemnly swear (or affirm) that you will well and truly try whether the complaint of E F against G H, now laid before you, is true, according to the evidence. So help you God.

Jurors' oath.

Jurors' oath.

The same oath (or affirmation) that your foreman has taken on his part, you and each of you shall observe and keep on your respective parts. So help you God.

Form of verdict for plaintiff.

SECT. 190. If the jury find the complaint to be true they shall return their verdict substantially in the form following:—At an inquisition held before A B and C D, esquires, two justices of the peace for the county of —— and state of Indiana, at ———, in the county aforesaid, on the —— day of ———, 18——, the jury, on their oaths, do find that the lands (or tenements) described as follows: (here describe as in the complaint) on the ——— day of ———, 18——, were in the lawful and rightful possession of the said E F, and that the said G H did, on the same day, unlawfully, with force and arms, and strong hand, enter forcibly upon the same, (or being lawfully upon the same, did unlawfully and with force and strong hand, expel and keep out the said E F,) and that he still continues wrongfully to detain the possession from him, the said E F; wherefore, the jury, upon their oaths (or affirmations) as aforesaid, find that the said E F ought to have restitution thereof without delay. *

If not a full jury, panel how filled.

SECT. 191. If, by accident or challenge, there shall happen not to be a full jury, the sheriff shall fill the panel from the bystanders, as in other cases; and if the jury, after a full hearing of the cause, shall find the complaint laid before them supported by evidence, they shall all sign their verdict, in the form aforesaid; otherwise, the defendant shall be adjudged his legal costs, and his execution therefor.

Jury shall sign verdict.

Judgment for plaintiff.

SECT. 192. If the jury shall return their verdict, signed by the whole panel, that the verdict is supported by evidence, the justices shall enter up judgment for the complainant to have

* The verdict for the complainant in such case must state that the premises are obtained by force. *Boxley* v. *Collins*, 4 Blackf. 320.

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restitution of the premises, and shall award their writ of restitution accordingly, which writ shall be substantially in the following form:* ARTICLE 6.

Form of writ of restitution.

The state of Indiana to the —— of —— county, greeting:

Whereas, at an inquisition of forcible entry and detainer, held before us the undersigned, two justices of the peace for the county of ——, in the said state of Indiana, at ——, in the county aforesaid, on the —— day of ——, 18—, the jurors empannelled and sworn according to law, returned their verdict in writing, signed by each of them, that E F was, on the —— day of ——, 18—, in the rightful possession of a certain tenement (or tract of land, setting it forth as described in the verdict,) and that, &c., (as in the verdict): Thereupon it was considered by us, justices as aforesaid, that E F should have restitution of the said premises: You are therefore commanded that, taking with you the force of the county if necessary, you cause the said G H to be forthwith removed from the premises, and the said E F to have the peaceable restitution of the same; and also that you levy of the goods and chattels of the said G H the sum of ——, being costs taxed against him on the trial aforesaid, together with —— for this writ, and your own fees, and for want of such goods and chattels of the said G H by you found, you are commanded to take the body of the said G H, and him commit to the common jail of the said county, there to remain until he shall pay the sum aforesaid, together with all fees arising on the service of this writ, or until he be delivered by due course of law; and make return of this writ, with your proceedings. Witness our hands and seals at —— aforesaid, the —— day of ——, 18—.

A B [SEAL.]
C D [SEAL.] } Justices of the peace.

Appeal.

SECT. 193. Every person who shall be aggrieved by any proceedings which may be had under the provisions of this article, shall be entitled to an appeal to the circuit court of the same county, under the same restrictions, and in the same manner, that appeals are taken from the judgment of justices under the statute respecting the trial of other causes; and the said circuit court shall hear and determine such appeal agreeably to the true intent and meaning of this article, and carry the same into final execution; but such judgment shall be no bar to any after action brought by either party.†

Three years quiet possession, &c., not affected.

SECT. 194. The provisions of this article shall not extend to any person who has had the occupancy, or has been in the quiet possession of any lands or tenements for the space of three whole years together, next after the termination of the time for which the premises were demised or let to him, or the person under whom he claims.‡

* The verdict must be signed by all the jurors. *Ward* v. *Crane*, 3 Blackf. 393.
The verdict in the circuit court for the plaintiff, on appeal, must, as on the trial before the justice, be signed by all the jurors. *Test* v. *Devers*, 2 Blackf. 80.

† See *Test* v. *Devers*, 2 Blackf. 80.—*Barton* v. *Osborn*, 6 Blackf. 145.

‡ See *Ward* v. *Crane*, 3 Blackf. 393.

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ARTICLE VII.

Of distress for rent.

SECTION

195. Who may distrain: affidavit.
196. Distress may be made after determination of lease, &c.
197. Constable may levy distress, &c.
198. Property liable to distress.
199. Provisions as to growing crops, &c.
200. When things annexed to the freehold, &c. may be removed by the purchaser.
201. As to beasts of the plough, implements of husbandry and of trade.
202. Property not liable to distress.
203. Property removed from the premises may be distrained, &c.
204. Provisions in favor of a bona fide purchaser.
205. Where beasts shall be impounded.
206. Landlord may feed beasts, &c. distrained, and tax defendant therewith.
207. If distress not replevied in five days, may be sold.
208. Oath of appraisers.
209. Compensation.
210. Sale by constable: notice of sale.
211. Further distress allowed, if necessary.

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212. If tenant confess and secure judgment for rent, &c., property to be discharged.
213. Right of property, if claimed, how tried.
214. Lien in favor of landlord for one year's rent, in case of an execution.
215. Landlord's claim to be proved before a justice of the peace, &c.
216. Justice's certificate: appeal.
217. Damages in case of unreasonable distress.
218. Treble damages if distress driven out of the county.
219. Treble damages in case of pound breach, &c.
220. If distress be made when no rent is due, injured party shall recover double the value of the property taken.
221. If property be removed to avoid payment of rent, tenant, &c. to pay value thereof and double costs.
222. Special damages allowed, &c. if distress irregular.
223. General issue in certain cases, &c.

Who may distrain.

Warrant.

Affidavit.

SECT. 195. It shall be lawful for any landlord, his, her, or their agent or attorney, to make distress for rent, by virtue of this article, by obtaining a warrant from some justice of the peace of the proper township where such distress shall be made, directed to some constable of said township, to be issued on complaint upon oath, describing the premises for which such rent shall or may be claimed as due and in arrear, in what payable, when due, and the amount thereof; and that he is fearful he shall lose his rent by attempting to collect it as other debts are collected.*

* See *Richardson* v. *Vice*, 4 Blackf. 13.

A justice of the peace has no authority, in the case of a distress warrant, to render a judgment for the amount of rent supposed to be due. Ibid.

A distress may be made after the tenant's death, and administration granted, &c. for rent which accrued in his lifetime. And the statute exempting executors and administrators from suit for a year, &c. does not apply to such case. *Merkle* v. *O'Neal*, 5 Blackf. 289.

A landlord should not distrain unless he is certain, 1. That the contract between himself and his tenant authorized a distress for rent. 2. That he has good and lawful cause to distrain. 3. That he has good and lawful right and authority to make the distress. 4. That the thing taken is distrainable. 5. That the distress is made at the proper time and place:—for if he fail in any of those points, he becomes a trespasser. Per *Stevens*, *justice*, *Clark* v. *Fraley*, 3 Blackf. 264. See *Spencer* v. *Burton*, 6 Blackf. 57.

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ARTICLE 7.

Distress after determination of lease, &c.

SECT. 196. Within six months after the determination of any lease for life, for years, or of any tenancy at will, any person having any rent upon such premises in arrear, may distrain for such arrears, either upon any property subject to distress remaining on such premises, or which may have been removed, in the same manner, and under the same provisions and restrictions, as if such lease or tenancy had not ended, if at the time any such distress shall be made, the title to or interest in such premises shall still be in such person.

Constable may levy distress, &c.

SECT. 197. Every such distress shall be made by any constable of the county where such goods are situated, who shall conduct the execution of such distress throughout.*

Property liable to distress.

SECT. 198. The following articles shall be liable to distress for rent, to-wit: Goods, wares, merchandise, and all other personal chattels which by law are subject to execution, except such as are hereinafter exempted from distress; also things annexed, for the purpose of trade or manufacture, to the freehold, or to any building, and not fixed into the wall of such building, so as to be essential to its support; also, wheat, corn, or any kind of grain or grass, whether growing on the demised premises, or whether the same be in cocks, or sheaves, or loose in the straw, in any barn, granary, or elsewhere, upon the land charged with the rent. †

Provisions as to growing crops.

SECT. 199. All such wheat, corn, grain, or grass, may be appraised, sold, or otherwise disposed of, according to law, for the purposes of such distress, in the same manner as any other goods and chattels of the tenant; and the purchaser thereof shall have free ingress, egress, and regress to and from the same, when growing, to repair the fences from time to time, and when ripe, the same to cut, gather, make, cure, thresh, and carry away, in like manner as the tenant might have done had such distress never been made.

Things annexed to the freehold, when removed by purchaser.

SECT. 200. Things annexed to the freehold, or to any building as aforesaid, shall not be removed until the same shall have been sold, when the purchaser shall have the right to enter on the premises and carry them away.

As to beasts of the plough, &c.

SECT. 201. Beasts of the plough, sheep, and the implements of husbandry and of a mechanic's trade, shall not be distrained for rent, unless other chattels sufficient to discharge the rent cannot be found. ‡

Property not liable to distress.

SECT. 202. Personal property exempt by law from execution, or which the tenant, if he were an execution debtor, might select in lieu of the articles specified as exempt from execution, or personal property deposited with the tenant, or hired by him, or lent to him, or property of another person than the tenant, which shall have accidentally strayed or come upon the demised premises, or which shall have been deposited with a tavern-

* See *Harris* v. *McFaddin*, 2 Blackf. 71.

† See *Given* v. *Blann*, 3 Blackf. 64—*Clark* v. *Fraley*, 3 Blackf. 264.

‡ See *Given* v. *Blann*, 3 Blackf. 64.

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keeper, or keeper of any ware-house, or other person in the usual course of his business, or deposited with any mechanic, or other person, for the purpose of being repaired or manufactured, or any article manufactured therefrom, shall not be subject to distress or sale for rent; but the officer making the distress shall not be liable for seizing or selling any such property not belonging to the tenant, unless before such taking or sale, notice of the claim of a third person be given to such officer.

Property removed from the premises may be distrained, &c.

SECT. 203. Any goods or chattels of the tenant which shall be carried off from the demised premises, either before or after any rent shall become due, such rent being left unpaid, may be seized as a distress for any rent due at the time of such seizure, wheresoever they shall be found, at any time within six months after such removal; and the goods and chattels so seized shall be sold, as if they had been distrained upon the demised premises.

Provisions in favor of a bona fide purchaser.

SECT. 204. But no such goods or chattels shall be liable to be seized, as provided in the preceding section, which shall have been sold before such seizure, to a purchaser, for a valuable consideration, and who was not privy to such fraudulent removal.

Where beasts shall be impounded.

SECT. 205. Whenever any beasts are distrained, they shall be put in an open pound, in the same county where they shall have been taken, or in some convenient place on the premises, or in such other place in the county as the officer distraining shall approve.

Landlord may feed beasts, &c. distrained, and tax defendant therewith.

SECT. 206. The person causing any beasts to be distrained, if the tenant will not give them their feeding, may do so for him, and the expense thereof shall be taxed and allowed as a part of the costs of such distress.

If distress not replevied in five days, may be sold.

SECT. 207. When any goods or chattels shall be distrained for rent, and the tenant, or owner of the goods so distrained, shall not, within five days after such distress taken and notice thereof with the cause of such taking shall have been left at the dwelling house or other most notorious place on the premises charged with the rent distrained for, replevy the same, with sufficient surety, as is provided for in the article regulating the action of replevin, then and in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining, or his agent duly authorized, shall and may, with the constable executing such warrant, cause the goods and chattels so distrained to be appraised by two reputable householders.*

Appraisement.

Oath of appraisers.

SECT. 208. Such appraisers shall, before making such appraisement, take an oath or affirmation that they will well and truly appraise the property thus distrained, to the best of their skill and judgment; which oath or affirmation said constable is fully authorized to administer.

* If the tenant wish to contest the landlord's right to distrain, — to rely for example, on non-tenuit, or riens in arrear, — he should institute his suit against the landlord. *Harris* v. *M'Faddin*, 2 Blackf. 71.

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Compensation.

SECT. 209. Said appraisers shall receive for their services the sum of fifty cents each for every day thus employed.

Sale by constable.

SECT. 210. Such constable, after such appraisement, shall proceed to sell the property thus distrained, or so much thereof as shall be necessary, at public auction, to the highest and best bidder over and above two-thirds of the appraised value thereof, for and towards the satisfaction of the rent aforesaid due and in arrear, for which such property was distrained, and of the costs and charges of such distress, appraisement, and sale, and other necessary costs and charges in relation thereto; and if there be any overplus, the same shall be paid over to the owner of the property distrained; but before such sale shall be had, the constable shall give ten days notice of the time and place thereof, by setting up notices thereof in three of the most public places in the township where such sale is to be made.

Proceeds, how disposed of.

Notice of sale.

Further distress allowed, if necessary.

SECT. 211. In all cases of distress for rent, where the value of the goods distrained shall be found not to be the full value of the rent distrained for, the party to whom such rent is due and in arrear, his executors or administrators, may from time to time distrain again for the residue thereof.

If tenant confess and secure judgment for rent, &c. property to be discharged.

SECT. 212. In all cases of distress for rent, if the tenant will, within ten days after distress made, confess judgment in favor of the landlord for the amount of the rent due, before some justice of the peace, and secure the same by sufficient replevin bail to be approved of by such justice of the peace, and shall also pay all the costs and charges of such distress, the property distrained shall be forthwith discharged and delivered to such tenant on demand.

Right of property, how tried.

SECT. 213. If any person other than the tenant of the demised premises, shall claim any property which may have been distrained, pursuant to the provisions of this article, such person may replevy the same, or he may try the right of property, according to the provisions of the law respecting the trials of the right of property.

Lien in favor of landlord for one year's rent, in case of execution.

SECT. 214. The goods and chattels of any tenant lying and being in or upon any messuage, lands, or tenements leased for life or lives, term of years, or otherwise, which are taken by virtue of any execution, shall be liable for the payment of all such sum or sums of money as are or shall be due from such tenant for rent of the premises, at the time of taking such goods and chattels by virtue of such execution, not to exceed one year's rent; and the said sheriff or other officer shall, after the sale of the said goods and chattels, pay to the landlord, or other person empowered to receive the same, such rent so due, if so much shall remain in his hands, and apply the overplus thereof, if any, towards satisfying the debt and costs in such execution mentioned.

Landlord's claim to be proved before a justice of the peace.

SECT. 215. Before such payment shall be made by the sheriff or other officer to the said landlord, he shall prove the same before a justice of the peace of the proper county, and such sheriff or other officer shall, after having received notice of

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such claim, withhold the payment of the money so collected until such landlord shall have had an opportunity to prove such claim, for a term of time not exceeding thirty days; and such execution plaintiff, his agent or attorney, shall have six days' notice of the time and place of making such proof, if such execution plaintiff, his agent or attorney, reside within the county; but if such execution plaintiff, his agent or attorney, do not reside in the county, then notice of the time and place of making such proof shall be left with the sheriff or other officer who may have such execution in his hands. *

Justice's certificate.

SECT. 216. A certificate from such justice that due proof has been made by such landlord, shall be sufficient authority for such sheriff or other officer to pay the amount, not exceeding one year's rent, so proved as aforesaid, to such landlord; and in all cases of appeal from the decision of such justice, the sheriff or other officer shall hold such moneys in his hands until the determination of said suit.

Appeal.

Damages in case of unreasonable distress.

SECT. 217. All distresses for any rent shall be reasonable; and whoever shall take an unreasonable distress for rent, shall be liable in an action on the case, at the suit of the party aggrieved, for exemplary damages.

Treble damages, if distress driven out of the county.

SECT. 218. No property distrained shall be driven out of the county in which it was distrained, and if so removed, it shall be considered a tresspass, and the party aggrieved thereby shall recover treble damages in an action of trespass quare clausum fregit.

Treble damages in case of pound breach etc.

SECT. 219. Upon any pound breach or rescue of goods and chattels or other property distrained for rent, the person or persons aggrieved thereby, shall, in a special action on the case recover treble damages against the offender or offenders in any such rescue or pound breach, or against the owner of the goods, chattels, or other property distrained, in case the same shall be found to have come to his use or possession.

If distress be made, no rent being due, injured party shall recover double the value of the property taken

SECT. 220. The owner and the personal representatives of the owner of any property distrained for rent pretended to be due, when in truth no rent was due, may, by an action of trespass on the case, recover against the person so distraining, or his personal representatives, double the value of the goods so distrained.†

If property be removed to avoid payment of rent, tenant, etc., to pay value thereof, and double costs.

SECT. 221. Any tenant or lessee who shall remove his goods from any demised premises, either before or after his rent shall become due, for the purpose of avoiding the payment of rent, and every person who shall knowingly assist such tenant or lessee in such removal, or in concealing any goods or chattels so removed, shall forfeit to the landlord of the demised premises, his heirs, or assigns, the value of the goods so removed or concealed, with double costs of suit.

* See *Darter* v. *The State*, 5 Blackf. 61.

† See *Richardson* v. *Vice*, 4 Blackf. 13.

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ARTICLE 1.

SECT. 222. When any distress shall be made for rent justly due, and any irregularity or unlawful act shall, after such distress, be done by the party distraining or his agent, the distress shall not therefore be deemed unlawful, nor shall the party making it be deemed a trespasser from the beginning, but in such case the party aggrieved may maintain an action of trespass on the case, and may recover full satisfaction for the special damages which he may have sustained by such irregularity or unlawful act, with full costs of suit and no more; unless tender of amends have been made by the party distraining or his agent before suit brought; which tender of amends shall prevent the recovery of any costs in such action.

Special damages allowed if distress irregular, etc.

Tender of amends.

SECT. 223. In any action of trespass or trespass on the case, in relation to any entry upon the demised premises for the purpose of any distress, or seizure, or sale of any goods thereupon, or for carrying away any property thus distrained or sold, the defendant may plead the general issue and give the special matter in evidence.

General issue in action in certain cases, etc.

CHAPTER 46.

OF SUITS AND PROCEEDINGS IN CHANCERY.

ARTICLE 1. Of the courts of chancery jurisdiction; the bill, and process of subpœna; notice to non-resident and unknown defendants; and some general provisions respecting the parties to the bill in chancery.
ARTICLE 2. Of the pleadings; taking the bill as confessed; amendments; issues; hearing; feigned issues; trial; exceptions; and depositions.
ARTICLE 3. Of references to a master in chancery.
ARTICLE 4. General provisions respecting decrees, conveyances, and final process.
ARTICLE 5. Of exhibiting interrogatories to the complainant; of making new parties by the answer; and some general provisions respecting cross bills and bills of discovery.
ARTICLE 6. Of bills of revivor and of review.
ARTICLE 7. Of injunction.
ARTICLE 8. Of the execution of conveyances by commissioners in case of deceased vendors of real estate.
ARTICLE 9. Of the care and custody of idiots, lunatics, and insane persons.

ARTICLE I.

Of the courts of chancery jurisdiction; the bill, and process of subpœna; notice to non-resident and unknown defendants; and some general provisions respecting parties to the bill in chancery.

SECTION
1. Jurisdiction of circuit courts.
2. Jurisdiction of probate courts.
SECTION
3. Powers of courts of chancery, &c.
4. Bill may be filed in term or vacation.

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SECTION
5. Subpœna.
6. Infants.
7. If defendant flee, &c., writ may issue to another county.
8. Process to another county, when cause of action is local.
9. Alias process.
10. Jurisdiction when subject matter of action is situate in different counties.
11. Subpœnas in chancery, how served.
12. Notice to non-resident defendant.—Publication.
13. Order of publication by the clerk in vacation.
SECTION
14. Notice in case names of defendants are unknown.
15. Cases in which party need not appear. Costs in such case.
16. Cases in which the court may dispense with making certain persons parties.
17. Cases in which trustees may represent persons beneficially interested.
18. Suits to execute the trusts of a will.
19. Complainant in case of a joint and several demand may proceed against one or more of the parties.
20. Complainant may join defendants claiming under different titles, &c.

Circuit courts.

SECTION 1. The circuit courts shall have cognizance in all suits properly cognizable in a court of chancery.*

Probate courts.

SECT. 2. The probate court shall have jurisdiction in suits in chancery where such jurisdiction is conferred by law.†

Powers of courts of chancery, &c.

SECT. 3. Such courts sitting in chancery shall have power to make rules and regulations for the government of proceedings had before them, and shall in all things be governed by the known usages of courts of equity, except where it may be otherwise provided by law.

Bill may be filed in term or vacation.

SECT. 4. All original applications to the chancery side of either of said courts shall be by bill, which may be filed in the clerk's office in term time or in vacation.

Subpœna.

SECT. 5. Upon the filing of any such bill process of subpœna shall be issued by the clerk, under the seal of the court, returnable to the first day of the next term.

Infants.

SECT. 6. Infants may institute, prosecute, and defend suits in chancery, by a next friend or guardian ad litem, as in suits at law.‡

If defendant flee, &c., writ may issue to another county.

SECT. 7. When a defendant resides in or flees to another county, process may be directed by the clerk to the sheriff of such other county, and be executed and returned by such sheriff; but no decree shall be entered against any such defendant, unless a cause of action be established against some defendant, who is a resident of the county where the suit is prosecuted, except as provided in the next section.

Process to another county when cause of action is local.

SECT. 8. In all cases where the cause of action is local, or where it shall appear by affidavit that the defendant has removed from the county after the filing of the bill, the process may issue

* See ante, page 647, section 8.

Cupps v. *Irvin*, 2 Blackf. 112.—*Peck* v. *Braman*, Ib. 141.—*Shelmire* v. *Thompson*, Ib. 270.—*Dougherty* v. *Hampston*, Ib. 273.—*Elderkin* v. *Shultz*, Ib. 345.—*Kipper* v. *Glancey*, Ib. 356.—*O'Brien* v. *Coulter*, Ib. 421.—*Jenison* v. *Graves*, Ib. 440.—*Raburn* v. *Shortridge*, Ib. 480.—*Henderson* v. *Bates*, 3 Blackf. 460.—*West* v. *McCarty*, 4 Blackf. 244.—*Bryan* v. *Blythe*, Ib. 249.—*Grimes* v. *Wilson*, Ib. 331.—*Cummins* v. *White*, Ib 356.—*Elliott* v. *Armstrong*, Ib. 421.—*Gray* v. *Woods*, Ib. 432.—*Pennington* v. *The Governor*, 1 Blackf. 78.—*Bottorf* v. *Conner*, Ib. 287.—*Gallion* v. *McCaslin*, Ib. 91.—*Prewitt* v. *Jenkins*, Ib. 294.—*Myers* v. *Cicott*, 5 Blackf. 225.—*Linton* v. *Potts*, Ib. 396.

† See ante, page 664.

‡ See ante, page 679.

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to any other county for service and return; and decree may be thereupon had as in other cases.

Alias process.

SECT. 9. When process is returned not executed at the return day thereof, the clerk, as a matter of course, may issue other or further process, without the order of the court, as often as the same is demanded by the complainant, until service thereof is had.

Jurisdiction, when subject matter is situate in different counties.

SECT. 10. Whenever the cause of action is local, and the subject matter thereof is situate in several counties, the complainant shall have his election in which of such counties he will commence his suit; and the court of chancery of such county shall have complete jurisdiction of the whole of such subject matter.*

Subpœnas in chancery, how served.

SECT. 11. The service of all subpœnas shall be by a delivery of a copy thereof, by the officer serving the same to the defendant personally, or in case of husband and wife, to the husband personally; or by leaving a copy thereof at the dwelling house or usual place of abode of the defendant, with some person who is a member of or resident in the family.

Notice to non-resident defendant.

SECT. 12. When it shall appear by affidavit filed that any defendant is not a resident of the state, or when it shall appear by the return of the officer or otherwise that the residence of any defendant is unknown, or that he so conceals himself that process cannot be served upon him, the court may grant an order of publication to be made for three weeks successively in some newspaper of general circulation to notify the defendant of the pendency of such bill.

Order of publication by the clerk in vacation.

SECT. 13. The affidavit of any disinterested and competent witness may, in any case where a defendant is not a resident of the state, be filed in vacation with the clerk of the court where such bill is pending; whereupon such clerk shall cause notice of the pendency of such suit to be published for three weeks successively in some newspaper of general circulation printed in the county, or if none be printed therein, then in the county in this state nearest thereto where any such newspaper is printed, notifying such defendant of the pendency of such suit, and that unless he plead to or answer the same before the calling of the cause, the bill, as to such defendant, will be taken as confessed.

Notice in case names of defendants are unknown.

SECT. 14. In cases where it shall be necessary to make any persons defendants to any bill, and the names of all or any of them shall be unknown to the complainant, and he shall annex to his bill an affidavit of his want of knowledge of the names of such persons, and that their residence is, as he verily believes, not in this state, proceedings may be had against them without naming them, and the court shall make such order respecting notice and the publication thereof as they may deem proper.

Nominal parties to bill, &c.

SECT. 15. Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an in-

* An objection that the court, whether of law or of equity, has no jurisdiction over the subject matter in controversy, may be made at any stage of the suit. *Cummins* v. *White*, 4 Blackf. 356.

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fant, the party, upon service of the subpœna upon him, need not appear and answer the bill unless the plaintiff specially require him so to do by the prayer of his bill; but he may appear and answer at his option; and if he do not appear and answer, he shall be bound by all the proceedings in the cause: if the plaintiff shall require him to appear and answer, he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct.

Costs in such case.

Case in which the court may dispense with making certain persons parties.

SECT. 16. When the parties on either side are very numerous, and cannot, without manifest inconvenience and oppressive delays in the suit, be all brought before the court, such court, in its discretion, may dispense with making all of them parties, and may proceed in the suit, having properly before it sufficient parties to represent all the adverse interests of the plaintiffs and the defendants in the suit; but in such case the decree shall be without prejudice to the rights and claims of all the omitted parties.*

Cases in which trustees may represent persons beneficially interested.

SECT. 17. In all suits concerning real estate which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate, or in the proceeds or the rents and profits, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases, it shall not be necessary to make the persons beneficially interested in such real estate or rents and profits parties to the suit; but the court may, upon consideration of the matter on the hearing, if it shall think fit, order such persons to be made parties.

Suits to execute the trusts of a will.

SECT. 18. In suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party; but the complainant shall be at liberty to make the heir at law a party when he desires to have the will established against him.

Complainant in case of joint and several demand may proceed against one or more of the parties, etc.

SECT. 19. In all cases in which the complainant has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

Complainant may join def'ts claiming under different titles, etc.

SECT. 20. The complainant may make as many defendants to his bill as he may think proper, although they may claim under different titles; but if the bill be dismissed as to any one

* A decree in chancery is not binding on a person who was not a party to the suit *Brown* v. *Wyncoop*, 2 Blackf. 230.

If in a suit against *A*, *B*, and *C*, there be a final decree against *A* alone, he cannot assign for error that *B* and *C* had not legal notice of the suit. *Pell* v. *Farquar*, 3 Blackf. 331.

See *Pegg* v. *Capp*, 2 Blackf. 257.

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of such defendants, or a decree be entered in his favor, he shall be entitled to his costs, unless the court, for special reasons, deem it right to determine otherwise.* ARTICLE 2.

ARTICLE II.

Of the pleadings: taking the bill as confessed: amendments: issues: hearing: feigned issues: trial: exceptions: and depositions.

SECTION

21. When the bill may be taken as confessed for want of an answer: dilatory plea, &c.
22. If bill be taken as confessed, the decree may be set aside on terms, &c.
23. Amendment of the bill before answer.
24. Amendment of the bill after answer, but before the cause is set down for hearing.
25. Amendment of the bill after the cause is set down for hearing.
26. If amendment by leave not filed in time, how regarded.
27. If bill amended after answer, defendant shall answer in such time as the court may direct.
28. Pleadings.

SECTION

29. On failure to plead, &c. may enter a decree, &c. or give time.
30. Case in which replication is not necessary.
31. A rejoinder not necessary.
32. Demurrers, pleas, and answers.
33. Proceedings on plea and demurrer.
34. Case in which demurrer or plea shall not be overruled.
35. Same subject.
36. Rule, that if the defendant submit to answer, he shall answer fully, shall no longer apply, where he might protect himself by plea, &c., and he may by answer insist on all matters of defence in bar, &c.

*The following decisions of the supreme court relating to bills in chancery, etc., are here appended:

To a bill in equity praying a decree for the payment of a lost bond, an affidavit of the loss must be annexed. *Pennington* v. *The Governor*, 1 Blackf. 78.

If bill in chancery, for a specific performance of a contract to convey land, do not aver that the complainant has not a complete remedy at law, the defect can only be taken advantage of by demurrer. *Prewit* v. *Jenkins*, 1 Blackf. 294.

When a bill contains a prayer for general as well as special relief, the court, in making a decree, is not confined to the particular relief prayed for, but may grant such relief as is warranted by the case made out in the bill. *Crumbaugh* v. *Smock*, 1 Blackf. 305.

If a demurrer to a bill, for want of proper parties, be sustained, the bill should not be dismissed, but the cause be ordered to stand over for a reasonable time, with leave to amend the bill. *Lindley* v. *Cravens*, 2 Blackf. 426.

A bill in chancery containing a claim against a defendant in his individual capacity, and another against him as an heir of his ancestor, may be objected to for multifariousness; but the objection must be made before the defendant has answered the bill. *Bryan* v. *Blythe*, 4 Blackf. 249.

Two persons joined in a bill in chancery, each having a separate claim against the defendant. One of the complainants, on account of his infancy, had a right to sue in chancery, but the other had no such right. *Held*, on demurrer, that the bill was insufficient. *Held*, also, that on sustaining the demurrer in such case, the bill should not be dismissed as to the infant, but should stand over in order that he might strike the name of the other complainant from the bill. *Grimes* v. *Wilson*, 4 Blackf. 331.

The person who is beneficially interested in the object of a bill in equity, and for whose use it is filed, should be a party to the suit. *Park* v. *Ballentine*, 6 Blackf. 223.

A bill in equity ought not to be dismissed for the want of proper parties, but should stand over for amendment. Ibid.

A complainant in chancery may, on payment of costs, dismiss his bill at any time before a final hearing, provided he be not in contempt.—His mere failure to comply with an interlocutory order of the court, does not, of itself, so place him in contempt as to prevent him from dismissing his bill on payment of costs. *Smith* v. *Smith*, 2 Blackf. 232. See ante page 635, section 61.

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SECTION
37. Same subject.
38. May decline answering certain interrogatories, &c.
39. Course of proceeding in case answer suggest that the bill is defective for want of parties.
40. Same subject.
41. Objection at hearing for want of parties, how court may decree.
42. Amendment of answer before replication, &c.
43. After replication.
44. Answer on oath: effect.
45. Before whom answer may be sworn to.
46. If sworn to out of the state, how certified.
47. Answer and demurrer: cannot proceed on answer until demurrer disposed of.
48. As to an answer when the demurrer or plea is overruled.
49. Costs of plea or demurrer.
50. Cause may stand for hearing on bill and answer.
51. Exceptions set down for hearing.
52. Time may be enlarged for filing exceptions.
SECTION
53. If exceptions allowed, defendant shall answer at the time directed by the court: attachment.
54. How discharged from attachment.
55. Costs, in case further answer is insufficient: course of proceeding in such case.
56. Costs, when exceptions overruled, or answer deemed insufficient.
57. Set-off.
58. Pleadings may be lodged with the clerk, &c.: when deemed filed.
59. Clerk shall endorse time of filing.
60. Parties to take notice of filing answers, &c. at their peril.
61. Trial of issues at law.
62. Feigned issue not necessary: note and entry.
63. Trial by jury, when had.
64. Term at which cause shall stand for hearing.
65. If both parties fail to appear, court may dismiss or continue cause.
66. Petition for rehearing, when filed.
67. Depositions, when taken.
68. How taken.

When the bill may be taken as confessed for want of answer, &c.

SECT. 21. When process has been served thirty days, or publication made sixty days before the term, the defendant shall plead or answer on or before the second day of such term, and in default thereof, the bill may be taken as confessed against him, unless the court, for sufficient cause, shall allow further time; but no special demurrer or dilatory plea shall be suffered to be filed after such second day of the term.

Dilatory plea, &c.

If bill taken as confessed, the decree may be set aside on terms, &c.

SECT. 22. When the bill is taken as confessed, the court may proceed to a decree at the same term; and such decree, when rendered, shall be deemed absolute, unless the court shall, at such term, set aside the same, or enlarge the time for filing an answer upon cause shewn, upon motion and affidavit of the defendant; and no such motion shall be granted unless upon the payment of the costs of the complainant up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall require, for the purpose of speeding the cause.

Amendment of the bill before answer, &c.

SECT. 23. Before answer, plea, or demurrer filed, the complainant may amend his bill, without leave of the court; but if such amendment be during the term, or within thirty days previous thereto, the defendant may have a continuance of the suit, and time to plead, answer, or demur, until the next term of the court.

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ARTICLE 2.

Amendment of bill after answer, &c., but before cause is set down for hearing.

SECT. 24. After an answer, plea, or demurrer is put in, and before the cause is ordered to be set down for hearing, the complainant, by leave of the court obtained on motion, may amend his bill within such time as the court shall allow, upon the payment of costs, as the court in its discretion may direct.

Amendment of the bill after the cause is set down for hearing.

SECT. 25. After the cause is ordered to be set down for hearing, and before the hearing thereof, the complainant may be permitted by the court to amend his bill; but he shall not in such case obtain leave to amend, except upon a special order of the court, on petition alleging the special matter of amendment intended to be made, and supported by affidavit that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and that such application is not made for vexation or delay.

If amendment by leave not filed in time, how regarded.

SECT. 26. If the complainant obtaining any order to amend his bill, as provided in the last two sections, shall not file his amendments or amended bill, as the case may require, in the clerk's office, on or before the time allowed therefor, he shall be considered to have abandoned the same; and the cause shall proceed as if no application for any amendment had been made.

If bill amended after answer, defendant shall answer in such time as the court may direct.

SECT. 27. In every case where an amendment of the bill shall be made after answer filed, and an answer thereto is necessary, the defendant shall put in a new or supplemental answer, within such reasonable time, at the same, or at or before the ensuing term, as the court may direct; and in default thereof, the like proceedings may be had as in cases of a failure to put in an original answer.

Pleadings.

SECT. 28. If the defendant plead, answer, or demur, the complainant shall reply, and the defendant rejoin, until the issues in law or of fact shall be joined.

On failure to plead, court may enter a decree or give time.

SECT. 29. If either party fail to complete the issue on his part, the court for such failure may enter a decree against him, or in their discretion give further time for the completion of the issues.

Case in which replication is not necessary.

SECT. 30. Where no special replication to an answer is necessary, the issue may be deemed to be made up by bill and answer. *

A rejoinder not necessary.

SECT. 31. When a replication is filed, the case shall be considered at issue, and it shall not be necessary to rejoin in any case. *

Demurrers, pleas and answers.

SECT. 32. The defendant may, at any time before the bill is taken for confessed, or afterwards with the leave of the court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part, and answer to the residue; but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea, and explicitly denying the fraud and combination, and the facts on which the charge is founded.

* See post, section 50 of this chapter.

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PART III.

Proceedings on plea and demurrer.

SECT. 33. The complainant may set down the demurrer or plea to be argued, or he may take issue on the plea: if upon an issue the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.*

Cases in which demurrer or plea shall not be overruled, &c.

SECT. 34. No demurrer or plea shall be held bad, and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

Same subject.

SECT. 35. No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter which may be covered by such demurrer or plea.

Rule that if defendant submit to answer, he shall answer fully, shall no longer apply, when he might protect himself by plea &c.

SECT. 36. The rule that if a defendant submit to answer, he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea protect himself from such answer and discovery; and he shall be entitled in all cases by answer to insist upon all matters of defence, (not being matters of abatement, or to the character of the parties, or matters of form,) in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar.

Same subject.

SECT. 37. In such answer, he shall not be compellable to answer any other matters than he would be compellable to answer and discover upon filing a plea in bar, and an answer in support of such plea, touching the matters set forth in the bill to avoid or repel the bar or defence.

May decline answering certain interrogatories, &c.

SECT. 38. A defendant shall be at liberty by answer to decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill, from which he might have protected himself by demurrer.

Course of proceeding in case answer suggest bill defective for want of parties.

SECT. 39. Where the defendant shall by his answer suggest that the bill is defective for want of parties, the complainant shall be at liberty to set down the cause for argument upon that objection only, and the purpose for which the same is so set down shall be entered in the clerk's order book, in the form or to the effect following: "set down upon the defendant's objection for want of parties."

Same subject.

SECT. 40. When the complainant shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course, to an order for liberty to amend his bill by adding parties; but the court, if it think fit, shall be at liberty to dismiss the bill.

* The proper mode, under our statute, of objecting to the validity of a plea to a bill in chancery, is by a motion to have the plea set down for argument; but the mere circumstance that the plea was set down for argument on a demurrer to it, instead of on such a motion, cannot be assigned for error. *Raymond* v. *Simonson*, 4 Blackf. 77.

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ARTICLE 2.

Objection for want of parties at the hearing how court may decree.

SECT. 41. If the defendant, at the hearing of a cause, object that the suit is defective for want of parties, not having by plea or answer taken the objection, and therein specified by name or description, the parties to whom the objection applies, the court, if it think fit, shall be at liberty to make a decree saving the rights of the absent parties.

Amendment of answer before replication.

SECT. 42. After an answer is put in, it may be amended as of course, in any matter of form, or by filling up a blank, or correcting a date or reference to a document, or other small matter, and be resworn at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer.

After replication.

SECT. 43. After replication or such setting down for a hearing, the answer shall not be amended in any material matters, or by adding new facts or references, or by qualifying or altering the original statements, except by special leave of the court upon motion and cause shown, supported, if required, by affidavit; and in every case where leave is so granted, the court may, in their discretion, require that such amendment be separately engrossed and added as a distinct amendment to the original answer so as to be distinguishable therefrom.

Answer on oath.

Effect.

SECT. 44. All answers shall be upon oath or affirmation; and if the answer deny the material allegations in the bill, the complainant shall not have a decree, unless such allegations be proved by two witnesses, or by one witness and corroborating circumstances. *

Before whom answer sworn to.

SECT. 45. Every defendant may swear or affirm to his answer before any judge, or clerk of a circuit court, justice of the peace, master in chancery, or notary public.

If sworn to out of the state, how certified.

SECT. 46. If the answer be sworn or affirmed to without this state, it may be sworn or affirmed to before any clerk or prothonotary of a court of record, notary public, mayor or recorder of a city, or justice of the peace; and if such officer have a seal, his official attestation with the seal of his office affixed, or if he shall not have such a seal, then his official certificate, with the certificate of the prothonotary or clerk of some court of record of the same county, shall be sufficient to entitle such answer to be received by the court.

* It is a general rule that an answer in chancery is to be taken as true, unless it be disproved by two witnesses, or by one witness and corroborating circumstances *Green* v. *Vardiman*, 2 Blackf. 324.—*Jenison* v. *Graves*, 2 Blackf. 440.

This rule, however, does not extend to every thing which the answer contains in favor of the defendant: it applies only to that part of the answer which is directly responsive so the charges in the bill. *Green* v. *Vardiman*, 2 Blackf. 324.

Matters which are set up in avoidance, and which are not responsive to the bill, must, when in issue, be proved by the defendant. Ibid.

If the answer admit a fact but rely on a distinct fact in avoidance, the defendant must prove the fact on which he relies. Ibid.

An answer in chancery acknowledged the receipt, from the complainant, of an assignment of property in part payment of the defendant's demands against him; but the answer also stated that the defendant had afterwards cancelled the assignment.—*Held*, that the defendant's statement in the answer that the assignment had been cancelled, was no evidence for him of that fact. *Wasson* v. *Gould*, 3 Blackf. 18.

When exhibits are the foundation of a suit in chancery, and their execution is not admitted, they must be proved either by depositions or viva voce, at the hearing. *Sandford* v. *Shelby*, 4 Blackf. 134.

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PART III.

Answer and demurrer.

SECT. 47. If the defendant file an answer and demurrer, the complainant shall not proceed on the answer till the demurrer shall have been argued or disposed of.

As to an answer when the plea, &c., is overruled.

SECT. 48. If a plea or demurrer be overruled, no other plea or demurrer shall be thereafter received without leave of the court; and in case a plea be overruled, the bill may be taken as confessed, and if so done the court shall proceed to decree thereon; or an answer may be received by the court on an affidavit of merits, and that such plea was not filed for delay; and if a demurrer be overruled, the defendant shall be ordered to answer.*

Costs of plea or demurrer.

SECT. 49. If the plea or demurrer be allowed, the complainant shall pay costs; and if overruled, the defendant shall pay costs.

Cause may stand for hearing on bill and answer.

SECT. 50. If the complainant wish to file exceptions or a replication to the answer, he shall do so at such time as the court shall require; or on failure thereof, such cause shall stand for hearing on the bill and answer.†

Exceptions set down for hearing.

SECT. 51. When exceptions are filed, the complainant shall cause them to be set down for a hearing at such time as the court shall direct; and if he shall not so set them down, the exceptions shall be deemed to be abandoned, and the answer shall be demed to be sufficient.

Time to file exceptions may be enlarged.

SECT. 52. The court may enlarge the time for filing exceptions, or for hearing the same, upon such terms as may be deemed reasonable.

If exceptions allowed, defendant shall answer at the time ruled by the court.

Attachment.

SECT. 53. If, at the hearing, the exceptions shall be allowed the defendant shall be bound to put in a full and complete answer at the time ruled by the court; otherwise the plaintiff shall as of course be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed; or, at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions.‡

* Where a demurrer to a bill in chancery is overruled, a final decree is not rendered against the defendant, but he is only ordered to answer. *Bottorf* v *Conner*, 1 Blackf. 287.

The court, on overruling a demurrer to a bill in chancery, should give the defendant a reasonable time to make and file his answer. *Kipper* v. *Glancey*, 2 Blackf. 356.

† The mode of objecting to an answer as insufficient, is not by demurring but by filing exceptions. *Arnold* v. *Styles*, 2 Blackf. 391.

If the answer to any particular charge in a bill be not sufficiently explicit, the complainant should file exceptions to that part of the answer; but if, instead of doing that, he acquiesce in the answer, the charge must be proved or it will be disallowed. *Pegg* v. *Davis*, 2 Blackf. 281.

As to filing a replication, see ante sections 30, 31, of this chapter.

See also *Demaree* v. *Driskell*, 3 Blackf. 115.

‡ If exceptions be taken to some parts of an answer in chancery, and the court consider the exceptions valid, the defendant may be ordered to answer over so far as the exceptions extend, but he cannot be required to answer over generally. *Pegg* v *Davis* 2 Blackf 281.

If any particular claim in a bill be not answered, the complainant should insist on an answer, and if such answer be refused, he may take a decree pro tanto by confession; and then, if the charge be sufficiently explicit, it may be recovered without farther proof. But should the complainant, instead of pursuing that course, bring the

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ARTICLE 2.

SECT. 54. The defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the court, upon his putting in such answer and complying with such other terms as the court may direct. How discharged from attachment.

SECT. 55. If a second or further answer be adjudged insufficient, the defendant shall pay double costs; and in such case further time to answer shall not be allowed, and the bill shall be taken as confessed, as if no answer had been filed; or the defendant may be committed on attachment as provided in the last two preceding sections. Costs in case further answer is insufficient. Course of proceeding in such case.

SECT. 56. If upon argument the complainant's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the court at the hearing upon the exceptions. Costs when exceptions overruled or answer deemed insufficient.

SECT. 57. In suits in chancery for the payment or recovery of money, set-offs shall be allowed in like manner and with like effect as in suits at law.* Set-off.

SECT. 58. Either party may lodge his answer, exceptions, or other pleadings with the clerk in vacation; but they shall not be considered as filed until noted on the order book in term, unless such answer, exceptions, or other pleading be required by the court to be filed in vacation, on or before a day specified. Pleadings may be lodged with the clerk, &c.: when deemed filed.

SECT. 59. The clerk shall endorse on all the papers filed in any cause the time of their filing; but it shall not be necessary to copy them on the order book. Clerk endorse time of filing.

SECT. 60. Parties to suits in chancery shall take notice, at their peril, of the filing of answers, pleas, demurrers, replications, and other pleadings, and of the pronouncing and signing of decrees. Parties to take notice of filing answers, &c. at their peril.

SECT. 61. Issues in law shall stand for trial as soon as they are made up. Trial of issues at law.

SECT. 62. It shall not be necessary to make up a feigned issue; but whenever a question arises which, according to the usage, practice, and discretion of courts of chancery, ought to be referred to a jury for trial, the court may cause a comprehensive note and entry of the matter so to be tried, to be made; Feigned issue not necessary, &c.

cause to a hearing on the merits, he can only entitle himself to the claim by proving it. Ibid.

If the charge in a bill be not stated with sufficient certainty, the complainant, even after a decree pro confesso, cannot have a final decree unless he establish his demand by satisfactory evidence. Ibid.

See *Platt* v. *Judson*, 3 Blackf. 235.

* See ante, pp. 708, 709, 710.

In matters of account which are mutual and complicated, or where a discovery is required, or a multiplicity of suits will be avoided, or the remedy at law is not full and adequate, or fraud, accident, or mistake is connected with the subject, courts of equity have jurisdiction; but where none of these characteristics exist, the mutual dealings of the parties result in causes of action, matters of set-off, &c., cognizable only at law. *Cummins* v. *White*, 4 Blackf. 356.

Courts of equity sometimes protect a creditor against the effects of the insolvency of a debtor, where there are mutual credits and the law furnishes no adequate remedy, by decreeing a set-off. Ib.

Courts of equity have no jurisdiction over accounts where there is but one item on a side, or where there is no mutuality of dealing, and a discovery is not required. Ib.

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PART III.

and the verdict of the jury thereon shall be taken for the information of the court.*

Trial by jury, when had.

SECT. 63. Where an issue or the matter for trial embraced in such comprehensive note and entry is to be tried by a jury, the court, if the parties do not agree, shall direct the trial to be had as soon as circumstances will admit.

Term at which cause shall stand for hearing.

SECT. 64. When no depositions are to be taken, the cause shall stand for hearing at the term at which the issue shall have been completed; but when depositions are to be taken, the cause shall stand for hearing at the term next after the completion of the issue, unless the court, for good cause shown, grant further time.†

If both parties fail to appear.

SECT. 65. If at any time the complainant fail to prosecute and the defendant fail to appear, the court may dismiss the bill or continue the cause, at their discretion.

Petition for rehearing.

SECT. 66. Petitions for rehearing shall be preferred at the term of the court at which the order or decree complained of was made; and such petition shall be heard and the prayer thereof allowed or disallowed, at the same or any subsequent term.

Depositions, when taken.

SECT. 67. The complainant may take depositions in thirty days after the subpœna has been executed or publication made; and the defendant may take depositions as soon as his answer is filed.

How taken.

SECT. 68. Depositions may be taken before the same officers or under like commissions, and in like manner, and subject to the same rules and regulations of law, as provided in the case of depositions in suits at law.‡

ARTICLE III.

Of references to masters in chancery.

SECTION	SECTION
69. Matter referred, at what time presented to the master.	71. Master shall proceed without delay.
70. Master shall assign time and place for proceeding therein.	72. Authority and powers of the master.
	73. How accounting parties shall bring in their accounts.

* A court of chancery may take the opinion of a jury as to any of the facts in controversy between the parties, whenever it thinks proper so to do. *Ray* v. *Doughty*, 4 Blackf. 115.

† The right of a continuance of a suit in chancery until the next term after the issue is completed, is not given by the statute unless depositions are to be taken. *Andrews* v. *Jones*, 3 Blackf. 440.

‡ See ante, pp. 720—725.

One of two defendants in chancery cannot be examined as a witness without a special order of the court. *Wheeler* v. *Emmerson*, 2 Blackf. 293.

The complainant in chancery has a right to an order to examine a defendant as a witness on the trial of an issue, &c., saving just exceptions; and though it is usual to suggest in the petition that the party is not interested, such suggestion is not necessary. *McPheeters* v. *McPheeters*, 6 Blackf. 221.

The answer of one defendant in chancery is no evidence against his co-defendant. *Thomason* v. *Tucker's administrators*, 2 Blackf. 172.

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SECTION
74. Depositions, &c. in court may be used before the master.
75. May examine creditor coming in to claim, &c.
76. Evidence before the master may be taken down, if required.
77. Matters which need not be recited in the master's report.
78. His report filed in clerk's office.
79. Exceptions to the report.
80. When heard.
81. Costs of exceptions.
82. Fees and costs before the master.
83. Court may require masters, trustees, receivers, &c. to give bond.
84. To whom payable.

ARTICLE 3.

Matter referred, at what time presented to the master.

SECT. 69. Whenever a reference of any matter is made to a master in chancery to examine and report thereon, the party at whose instance or for whose benefit the reference is made, shall cause such matter to be presented to the master for a hearing within the time limited by the court for such hearing; and if such party shall omit so to do, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master at the costs of the party procuring the reference.

Master shall assign time and place for proceeding therein.

SECT. 70. Upon every such reference it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceeding therein, and to give due notice thereof to each of the parties or their counsel; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed ex parte, or in his discretion to adjourn the examination and proceedings to a future day, giving notice to the absent party or his counsel of such adjournment.

Master shall proceed without delay.

SECT. 71. It shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay; and either party shall be at liberty to apply to the court for an order to the master to speed the proceedings, and to make his report, and to certify to the court the reasons for any delay.

Authority and powers of the master.

SECT. 72. The master shall regulate all the proceedings in every hearing before him, upon every such reference; and he shall have full authority,

1. To examine the parties in the cause upon oath touching all matters contained in the reference;

2. To require the production of all books, papers, writings, vouchers, and documents relating to such matters;

3. To examine on oath, viva voce, all witnesses produced by the parties before him;

See chap. 38, art. 4.

4. To order the depositions of witnesses, to be read before him, to be taken under a dedimus, to be issued upon his certificate, from the clerk's office; such depositions to be taken as in other cases;

5. When not specially instructed by the court, he shall direct the mode in which the matters requiring evidence shall be proved before him;

6. To administer all oaths and affirmations, and generally to do all other acts and direct all other inquiries and proceedings in the matters before him which may be necessary and proper to the justice and merits of the case and the rights of the parties.

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PART III.

How accounting parties shall bring in their accounts.

SECT. 73. All persons accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties, who shall not be satisfied with the accounts so brought in, shall be at liberty to examine the accounting party, viva voce, or upon interrogatories filed with the master, or by deposition, as the master shall direct.

Depositions, &c. in court may be used before the master.

SECT. 74. All affidavits, depositions, and documents, which have been previously made, read, or used in the court, upon any proceeding in any cause or matter, or when so directed by the court, may be used before the master.

May examine creditor coming in to claim, &c.

SECT. 75. The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or viva voce, or in both modes, as the nature of the case may appear to him to require.

Evidence may be taken down.

SECT. 76. The evidence upon any such examination shall be taken down by the master, or by some other person by his order in his presence, if either party require it, in order that the same may be used by the court if necessary.

Matters which need not be recited in the master's report.

SECT. 77. In the reports made by the master to the court, no part of any state of facts, charge, deposition, affidavit, examination, or answer, brought in or used before him, shall be stated or recited; but such state of facts, charge, affidavit, deposition, examination, or answer shall be identified, specified, and referred to, so as to inform the court what state of facts, charge, affidavit, deposition, examination, or answer were so brought in or used.

Report filed in clerk's office.

SECT. 78. The master, as soon as his report is ready, shall return the same into the clerk's office; and such report shall be filed by the clerk and the return thereof noted on the order book of the court.

Exceptions to the report.

SECT. 79. Exceptions to the report of the master shall be filed within such time as the court shall allow; and if no exceptions be filed within such time, the report shall stand confirmed.

When heard.

SECT. 80. Such exceptions shall stand for hearing at the term at which they are filed, or if they are filed in vacation, at the term next after such filing.

Costs of exceptions.

SECT. 81. Costs on allowing and overruling exceptions shall be paid by the party against whom the court shall direct the same to be taxed.

Fees and costs before the master.

SECT. 82. The fees of witnesses before the master, and for issuing process for their attendance, shall be the same as allowed in cases in the circuit court; and for all matters and services done by the master, or which shall accrue out of court on account of such reference, and for which no fee is fixed by law, the court shall allow a reasonable compensation; and all such fees and costs shall constitute a part of and be taxed with the costs of such cause.

Court may require masters, trustees, receivers, &c. to give bond.

SECT. 83. The court may require masters in chancery and all commissioners to dispose of property real and personal, trustees and receivers, when the same is not otherwise provided by

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law, to give bond and surety in such manner and with such penalty, for the payment over of all moneys which may come to their hands, and for the due performance of their duties as the court shall direct. ARTICLE 4.

SECT. 84. Such bond shall be made payable to the state of Indiana, and shall be for the benefit of all persons affected or aggrieved by any act or mal-conduct of the person required to give such bond; and suits may be maintained, and judgment given therein, as in the case of bonds of officers or trustees who are required by law to give bond. To whom payable.

ARTICLE IV.

General provisions respecting decrees, conveyances, and final process.

SECTION
85. Effect of decree.
86. Effect of a decree for a conveyance, &c.
87. Commissioners or master to execute conveyance of real estate.
88. Effect of conveyance.
89. As to attachment, sequestration, &c.
90. Process on decree for payment of money or costs.
91. Stay of execution.
92. Appraisement of property on execution.
93. Decree for performance of specific act.
94. Affidavit for writ of attachment, if decree not complied with, and proceedings thereon.
95. Writ of sequestration.
96. Decree for possession, &c. of real estate, how enforced.
97. Liability of sheriff, &c.
98. Parties not personally notified may open decree within five years.
99. Notice in such case to the complainant.
100. Property which may have passed to an innocent purchaser not affected by opening such decree.

SECT. 85. The decree of a court of chancery shall, from the time it is pronounced, have the force, effect, and operation of a judgment at law. Effect of decree.

SECT. 86. When a decree shall be made for a conveyance, release, or acquittance, and the party against whom such decree is made does not comply therewith by the time specified, such decree shall be considered, deemed, and taken, in all courts of law and equity, to have the same operation, force and effect, and be as available in every respect as if the conveyance, release, or acquittance had been executed conformably to such decree.* Effect of a decree for a conveyance, &c.

SECT. 87. Whenever the court shall deem the same necessary, they may appoint a commissioner or commissioners to execute a conveyance of real estate, to the person entitled thereto, and may require such commissioner or commissioners to report, at such time as the court shall prescribe; or the court may direct such conveyance to be made and reported by a master in chancery. Commissioners to execute conveyances.

* See post, section 93 of this chapter.

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PART III.

Effect of conveyance.

SECT. 88. Such conveyance shall be acknowledged before and approved by the court, and spread upon the order book, and shall vest all the title to the premises conveyed thereby, in the alienee or grantee, as fully and completely as the same could and ought to vest by virtue of the decree, in pursuance of which such conveyance was executed.

As to attachment, sequestration, &c.

SECT. 89. Courts exercising chancery jurisdiction shall have power to enforce their decrees, orders, and rules, by process of attachment against the party in contempt, or by process of sequestration against his goods and chattels, lands and tenements, or so much thereof as may from time to time be found necessary; and also to inflict such punishment upon any person being in contempt of any decree, order, rule, or process, as may be consistent with the usages and practice of courts of chancery.

Process on decree for payment of money or costs.

SECT. 90. Whenever a decree is exclusively for the payment of money, and in all cases where costs are decreed, final process for the collection thereof may be the same which is used in cases of judgments at law in the circuit court, in actions of assumpsit.*

Stay of execution.

SECT. 91. Whenever any decree is for the payment of a sum of money, the defendant shall be entitled to a stay of execution thereon, upon entering replevin bail as in judgments at law.†

Appraisement of property sold on execution.

SECT. 92. Whenever any property, real or personal, is sold pursuant to the decree of a court of chancery, by virtue of a writ of execution issued on any such decree, such property must be appraised and sold, subject to such appraisement, as upon executions at law.‡

Decree for performance of specific act.

SECT. 93. If a decree be for the performance of any specific act, as for example, the execution of a conveyance, or the delivery up of deeds or other documents, the decree shall in all such cases prescribe the time within which the act shall be performed.

Affidavit for writ of attachment, if decree not complied with, &c.

SECT. 94. Upon an affidavit being filed before the court by the party entitled to have such act done, stating that the decree of the court has not been complied with, a writ of attachment may issue against the delinquent party, from which, if attached, he shall not be discharged, unless upon a full compliance with the decree, or unless he be discharged by a special order of the

* A decree determining the amount due on a mortgage, and authorizing a sale of the mortgaged premises, draws interest at the rate of only six per cent. per annum, though the debt previously drew interest, according to the contract, at a much higher rate. *Wernwag* v. *Brown*, 3 Blackf. 457.

A decree must show with certainty the sum due the complainant, and not leave the amount to be afterwards ascertained by the calculations of any ministerial officer. Ibid

A decree against two persons for a sum certain, stated that they should be jointly and severally liable for the same. *Held*, that the words "jointly and severally," &c., were merely surplusage, and did not render the decree objectionable. *Thorn* v. *Tyler*, 3 Blackf. 504.

† See ante, page 736, section 346.

‡ See ante, pages 747 to 749.

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court, upon motion and affidavit, enlarging the time for the performance of such decree. ARTICLE 5.

Writ of sequestration.

SECT. 95. If such delinquent party cannot be found, upon that fact being returned by the officer to whom such writ is directed, a writ of sequestration, on the order of the court to that effect, shall issue against the estate of such party, to compel obedience to the decree.

Decree for possession, &c. of real estate, how enforced.

SECT. 96. Whenever, by virtue of any decree, possession of lands, tenements, or hereditaments, is to be delivered to any party, the court may enforce obedience to its decree upon process, as in case of a judgment at law, whereby the delivery of possession is enforced.

Liability of sheriff, &c.

SECT. 97. If any sheriff or other officer to whom any process, writ, rule, or order of the court, is directed or delivered, shall not make service or return thereof according to law, or according to the tenor of such process, writ, rule, or order, such officer, unless the same shall have been stayed, shall be deemed to be in contempt, for which he may be attached and fined by the court.

Parties not personally notified may open decree within five years.

SECT. 98. Parties against whom a decree has been rendered, without other notice than the publication in the newspaper herein required, may, at any time within five years after the rendition of such decree, have such decree opened, and be let in to defend and to a hearing.

Notice in such case to the complainant.

SECT. 99. But before any such decree shall be opened, such party shall give such notice to the original complainant, or his heirs, devisees, executors, or administrators, of his intention to make application to have the decree opened, as the court in term, or the president judge thereof in vacation, shall require; and such party shall also file a full answer to the original bill, and an affidavit stating that during the pendency of such bill he received no actual notice thereof in time to appear in court and object to such decree, and shall also pay all such costs of the suit as the court shall direct.

Answer must be filed, &c.

Property which may have passed to an innocent purchaser not affected by opening such decree.

SECT. 100. If any real or personal property, which was the subject of any decree sought to be opened, as provided in the two last preceding sections, shall have passed into the hands of a purchaser in good faith, he shall not be affected by any proceedings consequent upon the opening of such decree.

ARTICLE V.

Of exhibiting interrogatories to the complainant: of making new parties by the answer: and some general provisions respecting cross bills and bills of review.

SECTION		SECTION	
101.	Defendant may exhibit interrogatories to the complainant.	102.	Defendant may bring new party before the court by his answer—subpœna.

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SECTION
103. Defendant's answer may require complainant to answer new matter.
104. Complainant's answer.
105. Cross bill against the original complainant, etc., and defendant's answer to original bill.
106. The answer of the complainant, how used.
107. Bill of discovery for the purpose of reading the answer on a trial at law, defendant may be examined viva voce before the jury.
108. Defendant to bill in such case, may state fully all matters, etc.
109. Such discovery shall not subject defendant to criminal prosecution.
110. Power of court to enforce such examination.

Defendant may exhibit interrogatories to the complainant.

SECT. 101. The defendant, after he shall have filed his answer, may exhibit interrogatories to the complainant, which shall be answered by such complainant on oath or affirmation; and his answers thereto shall be evidence in the cause in the same manner and to the same effect as the defendant's answer to the bill; and if the complainant shall not answer such interrogatories by the time appointed by the court, he shall be in contempt, and his bill shall be dismissed with costs, unless the court, for sufficient cause shown, shall enlarge the time for such answers; and such answers may be excepted to as in case of an answer, and with the like effect.

Defendant may bring new party before the court by his answer. Subpœna.

SECT. 102. When it is necessary for the defendant to bring a new party before the court, he may state the matter relating thereto in his answer, and insert new interrogatories for such new party to answer and pray relief; and thereupon a subpœna shall issue, and other proceedings be had against him as if such matter had been exhibited by bill.

Answer may require complainant to answer new matter.

SECT. 103. The defendant may introduce any new matter in his answer and pray relief, and call upon the complainant to answer the same on oath.

Complainant's answer.

SECT. 104. The complainant shall file his answer under the same regulations as in the case of a defendant answering the bill, except that such complainant may answer immediately, or, if he desire it, he shall be entitled to a continuance of the cause, and have until the second day of the next term to file his answer.

Cross bill against original complainant.

SECT. 105. When a defendant files a cross bill for discovery only against the complainant in the original bill, such defendant shall first answer the original bill before the original complainant shall be compelled to answer the cross bill.

The answer in such case.

SECT. 106. The answer of the original complainant to such cross bill may be read and used by the party filing the cross bill, at the hearing, in the same manner and under the same restrictions as the answer praying relief, may be read and used.

Bill of discovery, &c., def't may be examined before the jury viva voce.

SECT. 107. When a bill for discovery is filed for the purpose of reading the answer of the respondent in a trial at law, the party filing such bill, instead of requiring an answer to be filed, may examine the respondent viva voce before the jury touching the matters alleged in such bill respecting which a dis-

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covery is sought, leaving the credibility of the respondent to the jury as in case of witnesses. ARTICLE 6.

SECT. 108. In such case the respondent, under the direction of the court, shall be permitted to state fully all matters relating to or explanantory of the subject matter of such discovery. Def't may answer all matters, &c.

SECT. 109. Whenever a discovery of any matter of fraud is sought, the answer of any party or his statements on a viva voce examination, as provided in the last two preceding sections, shall not be admissible as testimony against him in any criminal prosecution on account of any such alleged fraud; nor shall he be liable to any fine, penalty, or imprisonment, for any offence or crime disclosed in his answer or on such examination.* Such discovery shall not subject def't to criminal prosecution.

SECT. 110. The court shall have the same power to enforce any such viva voce examination, that they have to compel an answer in chancery by attachment. Power of court to enforce such examination.

ARTICLE VI.

Of bills of revivor and of review.

SECTION
111. Where such bills shall be filed.
112. Party dying, how suit may be revived.
113. Same subject.
114. Filing of bill—process.
115. When a suit may be revived by an order of court.
116. Copy of order, how served.
117. Same subject.
118. Order, by what court or judge made.
119. Length of time of notice or service of process, before court shall proceed in such case.
120. Requisites of bill of revivor or of supplemental bill.
121. Bill of review.
122. Review upon matters of law.
123. For new matters.
124. Court, in case of bill of review, may stay proceedings on former decree.
125. Surety in such case
126. If proceedings not stayed, former decree complied with.

SECT. 111. Bills of revivor and of review shall be filed and prosecuted in the court where the record in the original cause remains.† Where such bills shall be filed, &c.

SECT. 112. When any suit in chancery is pending, and either party thereto shall die, the same may be revived for or Party dying, how suit may be revived.

* See *Harvey* v. *Crawford*, 2 Blackf. 43.

† A bill in chancery was filed in the *Union* circuit court to revive a decree of the *Franklin* circuit court in favor of the complainant's ancestor, respecting land situate, at the time of the decree, in *Franklin* county. When the bill of revivor was filed, the land, in consequence of a change of county boundaries, lay in *Union* county. *Held*, that the bill of revivor should have been filed in the *Franklin* circuit court; the *Union* circuit court having no jurisdiction of the cause. *Arnold* v. *Styles*, 2 Blackf. 391.
The merits of the decree cannot be disputed by an answer to a bill of revivor. Ibid. See *Fancher* v. *Ingraham*, 6 Blackf. 139.

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against the executors or administrators, heirs, legatees, or devisees of the deceased, as any suit under like circumstances may be revived at law.*

Same subject.

SECT. 113. Whenever a suit in chancery shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor, or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same.

Filing of bill—process.

SECT. 114. Such bill may be filed in the clerk's office at any time, and the proper process of subpœna shall, as of course, be issued by the clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the suit shall not be revived; and if no cause be shown, such suit shall stand revived as of course.

When a suit may be revived by an order of court.

SECT. 115. When a suit has abated after answer and before a decree, it may be revived in the name of the persons or parties to or against whom the right of action, in such case, survived, without a bill of revivor upon an order of the court to that effect.

Copy of order, how served.

SECT. 116. Upon obtaining such order against the representatives of a defendant, a copy thereof shall be served upon such representatives, if they reside within the state; or if they do not reside or cannot be found within the state, or their names are unknown, such order of revivor shall be published in some public newspaper, as in other cases of non-resident or unknown defendants.

Same subject.

SECT. 117. When such order of revivor is in favor of the representatives of the complainant, a copy of the order shall be served upon the defendant, or published in some public newspaper in like manner and in like cases as when process or publication is required at the commencement of a suit.

Order by whom made.

SECT. 118. Such order of revivor may be made as well by the president judge or the two associate judges in vacation, and entered on the order book and signed by them, as the same may be done during the term.

Length of time of notice or service of process before the court shall proceed in any such case.

SECT. 119. The court shall not proceed in any cause sought to be revived according to the provisions of this article, unless it appear that the process, order, or notice has been served on the adverse party, or published for the length of time previous to the term, which is required by law in case of process or publication in the commencement of a suit in chancery.

Requisites of bill of revivor or supplemental bill.

SECT. 120. It shall not be necessary in any bill of revivor or supplemental bill, to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

Bill of review.

SECT. 121. Any person who was a party to a decree of a court of chancery, his heirs, devisees, executors or administrators, may file a bill for a review of the proceedings in which such decree was rendered, at any time within five years next

* See ante, pp. 681, 558, 559.

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after the rendition of the decree; unless the person entitled to prosecute such bill of review was an infant, a married woman, or an insane person, in which case such bill may be filed and maintained within five years after the removal of such disability; but no such bill of review shall lie to a decree of divorce.

Review upon matters of law.

SECT. 122. If the bill for a review be brought upon error of law, appearing in the body of the decree, or in the proceedings themselves, it may be filed as an original bill as a matter of course.

—For new matter.

SECT. 123. If the bill for review be brought upon the discovery of new matter since the hearing of the former decree, such bill shall not be filed except with leave of the court.

Court, in case of bill of review, may stay proceedings on former decree.

SECT. 124. In case of a bill of review, the court may, at their discretion, on motion, stay the proceedings on the former decree until the further order of the court, or until final decree be made on the bill for review; but such motion must be made at the term at which leave to file such bill is granted, or, if filed in vacation, at the first term after such filing.

Surety in such case.

SECT. 125. If proceedings in the former decree are directed to be stayed, the court shall direct sureties to be given, as in cases of appeals, or of injunctions to stay proceedings at law.

If proceedings not stayed, former decree shall be complied with.

SECT. 126. If the court do not direct the proceedings to be stayed, the party against whom such former decree was rendered shall fully comply therewith as if no such bill for review had been filed; and in such case the court may, in their discretion, require surety for costs to be given on the bill for review.

ARTICLE VII.

Of injunctions.

SECTION

127. Injunctions, by what court or judges and in what cases granted.
128. Jurisdiction of the judges.
129. Notice to adverse party.
130. Injunction bond in personal action: release of errors.
131. How proceedings after judgment stayed.
132. Injunction bond in actions for the recovery of real estate.
133. Bond in other cases.
134. Ten per cent. damages, when allowed.
135. Damages on dissolution of injunction in action for real estate, &c.
136. Bond, where filed and kept.
137. Terms of injunction.
138. How copy of order of injunction served.
139. Effect of order as to officers, &c.
140. Writ of injunction not necessary.

SECTION

141. If money collected by sheriff before injunction, may be refunded, &c.
142. If sheriff fail to refund, he may be amerced, &c.
143. Court may order money to be paid into court.
144. Same subject.
145. Person violating injunction to stay waste, &c. may be attached in term or vacation.
146. Person arrested in term to be brought before the court.
147. If in vacation, shall be brought before a judge.
148. Shall enter into recognizance, &c., or in default thereof, shall be committed.
149. Motions to dissolve injunctions.
150. Jurisdiction of probate judges as to injunctions.

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Injunctions, by what court or judges, and in what cases granted.

SECT. 127. The circuit court in term, or the president judge alone, or the two associate judges together, in vacation, shall have full power and authority to grant injunctions,

1. To stay waste;

2. To stay all proceedings on judgments at law;

3. To stay and suspend proceedings on suits that are pending before such circuit court, or other court of inferior jurisdiction;

4. To exercise all powers usual and necessary for courts of chancery, in granting and enforcing restraining orders and injunctions; and,

5. To issue and cause to be executed, all process necessary to carry into effect the provisions of this section, by attachment or otherwise, according to the exigency of the case, and in conformity with the law and usages governing courts of chancery.

Jurisdiction of the judges.

SECT. 128. The power and authority conferred by the last preceding section may be exercised by the president judge, to operate in any county in his circuit, and by the two associate judges, to operate within their proper county.

Notice to adverse party.

SECT. 129. No injunction shall be granted, except in cases of emergency, until the adverse party has had ten days previous notice of the time and place of making the application therefor, unless such application be made in open court, in relation to or affecting any suit pending therein, at the term at which such application may be made, in which case no special notice shall be necessary to any of the parties in such suit.

Injunction bond in personal actions.

SECT. 130. No injunction shall be granted to stay proceedings after judgment in any personal action, unless the complainant shall file bond in the proper clerk's office, with surety to be approved by the court, judge, or judges, granting the injunction, in a penalty sufficient to secure the payment of such judgment, interest, and costs, and also the damages and costs which may be awarded by the court, if the injunction be dissolved; and such complainant shall also endorse and sign on his bill a release of errors in said judgment, whenever required so to do by the judge or judges granting such injunction, or by the court.

Release of errors.

How proceedings after judgment stayed.

SECT. 131. Proceedings after judgment shall be stayed only as to so much of such judgment as the party asking the injunction shall show by his bill that he is not equitably bound to pay.

Injunction bond in actions for the recovery of real estate, &c.

SECT. 132. No injunction shall issue to stay proceedings at law after verdict or judgment, in any action for the recovery of lands, or the possession thereof, unless the party applying therefor shall execute a bond, with one or more sureties, to the plaintiff in such action at law, in such sum as the court, judge, or judges, allowing such injunction shall require, conditioned for the payment of all such damages and costs as may accrue by reason of such injunction, in case of a decision against the party obtaining such injunction.

Bond in other cases.

SECT. 133. In all other cases not specified in the preceding sections, the party obtaining an injunction shall give bond to the adverse party affected thereby, with sureties, and in such penalty as may be required and approved by the court, judge,

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or judges, allowing the injunction, with condition for the payment of all damages and costs which may accrue by reason of such injunction. *

Ten per cent. damages, when allowed.

SECT. 134. When an injunction to stay proceedings after a judgment at law in a personal action shall be dissolved, the court shall award ten per centum damages against the party in whose favor such injunction was issued.

Damages on dissolution of injunction, in action for real estate, &c.

SECT. 135. If an injunction to stay proceedings after verdict or judgment in an action at law, for the recovery of real estate, or the possession thereof, be dissolved, the damages assessed against the party in whose favor such injunction was allowed, shall include the reasonable rents and profits of the lands recovered, and all waste committed thereon after the granting of the injunction; to be ascertained in such manner as the court shall direct.

Bond, where filed, &c.

SECT. 136. Whenever any bond, required before the issuing of an injunction, shall be filed with the proper clerk, the same shall be kept by him for the benefit of the person entitled thereto; and such bond shall be delivered to such person on demand.

Terms of injunction.

SECT. 137. Any court granting or continuing an injunction, may impose such terms and conditions on the party obtaining such injunction as shall be deemed equitable.

How copy of order shall be served, &c.

SECT. 138. Whenever an injunction is allowed before the service of subpœna, a copy of the order of injunction shall be issued with the subpœna, duly certified by the clerk, and delivered to the adverse party; if the injunction be granted after the service of the subpœna, such copy shall be served by delivering the same to such adverse party.

Effect of order as to officers, &c. after judgment.

SECT. 139. When an injunction is allowed after judgment, all officers of the court, and the party against whom the injunction is granted, his agent and attorney, shall proceed no further in any proceedings on the judgment so enjoined, and any process which may have been issued on such judgment shall be stayed.

Writ not necessary.

SECT. 140. It shall not be necessary in any case to issue a writ of injunction.

If money collected by sheriff before injunction, may be refunded, &c.

SECT. 141. When any sheriff or other officer has received the whole or any part of the money from the execution defendant, for the collection of which any execution shall have issued, and the execution defendant, his executors or administrators, shall have obtained an injunction to stay proceedings under such execution, such sheriff or other officer, unless otherwise ordered by the court, judge, or judges, granting the injunction, shall repay to the person against whom such execution was issued, his executors or administrators, the money so received, or such part thereof as may be enjoined, retaining sufficient to pay the costs which may be justly due; but the provisions of

* Such obligations as injunction bonds should receive a liberal construction: the intention with which they are executed cannot be mistaken, as they are prescribed by statute for a particular object. *Conner* v. *Paxson*, 1 Blackf. 207. See *McIntosh* v. *Chew*, 1 Blackf. 289.

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this section shall apply only in cases where such sheriff or officer shall not have paid over the money to the execution plaintiff, his agent or attorney, before enjoined. *

If sheriff fail to refund, he may be amerced, &c.

SECT. 142. If such sheriff or other officer shall fail or refuse on demand made by the complainant, his executors, or administrators, to pay over, as specified in the last preceding section, the money thus enjoined, such sheriff or other officer shall be amerced in open court, for the use of the complainant, his executors or administrators, in the same manner in which the sheriff may be amerced for failing to pay over money made on execution.†

Court may order money to be paid into court.

SECT. 143. Nothing contained in the two preceding sections shall prevent the court, judge, or judges, allowing the injunction, from ordering the money made on such execution to be paid into court, or retained in the hands of the officer for such length of time as such court, judge, or judges, shall direct, or until the injunction shall be dissolved or made perpetual.

Same subject.

SECT. 144. When the money is thus ordered to be paid into court, or to be retained in the hands of the officer, the court in term, for sufficient cause, may order the money to be paid to the complainant before the injunction is dissolved or made perpetual.

Person violating injunction to stay waste, &c. may be attached in term or vacation.

SECT. 145. If the person against whom an injunction to stay waste is allowed, shall, after the service of the notice thereof, do, commit, consent to, direct, or suffer any waste or destruction to be done upon the premises, contrary to the injunction, the court in term, or the president judge, or associate judges, in vacation, as the case may require, on motion and affidavit, setting forth such waste or destruction, may award an attachment for contempt, to be issued against the person charged with disobedience to and a breach of such injunction.

Person arrested in term, to be brought before the court.

SECT. 146. Such person, on being arrested on such attachment, if during the term, shall be brought forthwith before the court to answer such contempt, and shall be subject to such order as the court shall make touching the same.

If in vacation, shall be bro't before judge.

SECT. 147. Such attachment, whether issued in term or vacation, if not executed so as to be returned in term time, shall be, forthwith after service thereof, returned before the president judge of the circuit, or before any associate judge of the county.

Shall enter into recognizance, &c., or in default thereof, be committed

SECT. 148. Upon such return it shall be the duty of such judge to require such person thus attached to enter into a recognizance to the state of Indiana, with sufficient sureties, and in such penalty as such judge shall require, to be and appear before the judges of the circuit court of such county, at the next term thereafter, to answer such contempt; and also, that he execute a bond to the complainant, with sufficient surety, and in such penalty as such judge shall require, to comply with and abide such injunction; and in default of such recognizance

* See *Lasselle* v. *Moore*, 1 Blackf. 226.

† See ante, pages 757, 758.

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and bond, he shall be committed to the jail of the county, until he give such recognizance and bond, or be otherwise legally discharged. ARTICLE 8.

SECT. 149. Motions to dissolve injunctions on the bill for want of equity, may be made in court without notice, but motions to dissolve on bill and answer, or on bill, answer and exhibits, before the time for the final hearing of the cause, shall not be entertained, unless the other party have had ten days' notice of such motion. Motions to dissolve injunctions.

SECT. 150. The judges of the probate courts, within their respective counties, shall have all the powers hereby conferred on circuit courts, both in term and vacation, to grant injunctions and restraining orders, as to all matters and causes properly cognizable in the probate court, and to enforce obedience to any such injunction or restraining order. Jurisdiction of probate judges as to injunctions.

ARTICLE VIII.

Of the execution of conveyances by commissioners in the case of deceased vendors of real estate.

SECTION
151. Cases in which such commissioners may be appointed.
152. Summons; publication.
153. Term at which commissioners shall be appointed.
154. Conveyance reported to the court; confirmed unless objections be made.
155. Objections shall be specific.
156. If an objection probably valid be stated, petitioner must proceed by bill.
157. If conveyance confirmed, its effect, &c.
158. Proceedings in case the purchase money has not been paid.
159. Notice.
160. Conveyance.
161. Tender of conveyance, &c.
162. Action for the purchase money.
163. Trustee, &c. may have a conveyance executed to enable him to sue for the purchase money.
164. Suit after tender of the deed.
165. Effect of deed.

SECT. 151. Whenever any person who has executed a title bond or contract for the conveyance of real estate to any person or corporation, shall die before such conveyance is executed, and shall have made no legal provision, by will or otherwise, for the execution of such conveyance, the obligee or vendee, or his assignee, may file his petition in the circuit or probate court of the county where the real estate lies, or where the majority of the defendants to such petition reside, praying the appointment of a commissioner to convey the real estate for which he is entitled to a conveyance, in conformity with the condition of such obligation or agreement. Cases in which such commissioner may be appointed.

SECT. 152. Such petition may be filed in term or vacation, and the defendants thereto, if residents of the state, shall be summoned personally to appear and show cause, if any they Summons.

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have, why the prayer of such petition should not be granted; or if they are non-residents, notice thereof shall be published as in case of non-resident defendants to a bill in chancery.

Publication.

Term at which commissioner shall be appointed.

SECT. 153. When it shall appear to the court that such summons has been served fifteen days, or publication made thirty days before the first day of the term, and no sufficient cause shall be shown against the prayer of such petition, the court shall appoint a commissioner, or direct a master in chancery, to execute a conveyance in conformity with the obligations of the bond or agreement.

Conveyance reported to the court: confirmed unless objections be made.

SECT. 154. Such conveyance shall be reported to the court at the same term, or at the next succeeding term, accompanied with the original title bond or agreement, and the whole shall be spread at full length upon the records of the court, unless objections be made by the legal representatives of the deceased or other person interested in the estate intended to be conveyed.

Objections shall be specific.

SECT. 155. Such objections shall be made in writing, and shall specify the interest which the objector has in the premises intended to be conveyed, and the particular objection or objections against the confirmation of such conveyance, and shall be verified by the affidavit of such objector, that he verily believes such objections to be true.

If objection probably valid be stated, petitioner must proceed by bill.

SECT. 156. If any objection probably valid be stated, the court shall dismiss such petition; whereupon such petitioner must proceed by bill in chancery as if no such petition had been filed to obtain a conveyance.

If conveyance confirmed, its effect, &c.

SECT. 157. If no objection, or no objection sufficient to require the dismissal of such petition, be filed as aforesaid, such conveyance, if approved by the court, shall be confirmed, and shall be of the same force and effect as to vesting the title to the premises in the petitioner, as if the conveyance had been executed by the deceased party in his lifetime.

Proceedings in case the purchase money has not been paid.

SECT. 158. When any person shall die without having executed a conveyance, as in the first section of this article specified, and the whole or any part of the purchase money be unpaid at his death, the executor or administrator of such deceased person may file a petition in the circuit or probate court against the obligee, vendee, or assignee, or all of them, as may be necessary, and also the heirs at law of the deceased, praying in such petition for the appointment of a commissioner to execute a conveyance to the proper holder of such bond or contract.

Notice.

SECT. 159. Notice of the pendency of such petition shall be given in like manner as above required in case of a petition filed by the obligee or vendee.

Conveyance.

SECT. 160. The court in such case may appoint a commissioner or direct a master in chancery to execute a conveyance in conformity with the requisitions of the title bond or agreement, and report the conveyance as soon as executed, to the court; and if the court shall approve the deed, the same shall

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be entered of record and delivered to the executor or administrator.

Tender of conveyance, &c.

SECT. 161. The executor or administrator may tender such deed to the person to whom such tender should be made, and demand payment of the purchase money due and unpaid.

Action for the purchase money.

SECT. 162. If upon due tender of the deed, the person liable to an action for the recovery of the purchase money, refuse to pay the same, such executor or administrator may maintain an action for the recovery of the purchase money, due and unpaid, against the person thus liable.

Trustee, &c. may have a conveyance executed to enable him to sue for the purchase money.

SECT. 163. Whenever real estate is sold on a credit by the order or decree of any court having jurisdiction, and the tender of a deed is necessary by the terms or contract of sale, before such purchase money can be recovered, the court, on the application of the trustee or other person on whose application such sale was directed, may order a deed to be executed by a commissioner or master in chancery, conveying the premises sold to such purchaser.

Suit after tender of the deed.

SECT. 164. If, on the tender of such deed, the purchaser refuse to pay the purchase money, an action may be maintained against him for the recovery thereof.

Effect of deed.

SECT. 165. Any deed executed according to the provisions of this article, for the purpose of authorizing a suit to be maintained for the recovery of the purchase money, or any part thereof, shall be valid and effectual from the delivery thereof, to pass all the estate and interest necessary and intended to pass thereby.

ARTICLE IX.

Of the care and custody of idiots, lunatics, and insane persons.

SECTION

166. The courts which shall have care, &c. of idiots, lunatics, &c.
167. Court may award writ to the sheriff.
168. Jury.
169. Their oath.
170. Proceedings before the jury.
171. Inquisition.
172. The inquisition of the jury may be traversed.
173. Guardian.
174. Duties of guardian.
175. Same subject.
176. Effect of such inquisition on pending suits; may proceed against guardians.
177. Guardian may prosecute suits pending in favor of the ward, as guardian or as next friend.
178. Actions by and against ward, how prosecuted and defended.
179. Contract of lunatic, &c. void.
180. Court may decree that guardian shall convey, &c.
181. Idiot, lunatic, or insane pauper.
182. If insane person restored to his right mind, &c., shall receive his property, &c.
183. Person declared insane may file his petition, stating his restoration to his right mind.
184. Jury: inquisition.
185. Inquisition may be traversed.
186. Issue, how tried.
187. Effect of verdict in favor of the petitioner.
188. Of verdict against him.

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SECTION
189. If adjudged to be restored to his right mind, how pending suits, &c. affected.
190. In case of death of any such ward, powers of guardian to cease, &c.
191. Contracts of guardian, &c. in such case, how enforced, &c.
192. Complaint before a justice that an insane person is dangerous: jury.
193. Verdict and proceedings thereon.
194. Justice shall certify his proceedings to circuit court.

Courts which have care of idiots and lunatics, &c.

SECT. 166. The circuit and probate courts respectively, on the chancery side thereof, shall have the care and custody of all idiots, lunatics, and insane persons, and of their estates real and personal, so that the same shall not be wasted or destroyed; and shall provide for their safe keeping and maintenance, and for the maintenance of their families and the education of their children out of their estates and the rents and profits thereof.

Court may award writ to the sheriff.

SECT. 167. Whenever satisfactory information shall be given to such court, that any person in the county for which such court is held, is then an idiot, a lunatic, or insane, such court shall award a writ to the sheriff of the county, requiring him to summon a jury of twelve discreet and disinterested householders of the county, to inquire concerning the truth thereof.

Jury.

SECT. 168. The sheriff, on the reception of such writ, shall select such jury, and appoint a time and place for them to assemble.

Their oath.

SECT. 169. The sheriff shall administer an oath to such jury, that they will well, truly, and impartially inquire into the fact of such idiocy, lunacy, or insanity, as the case may be.

Proceedings before the jury.

SECT. 170. Such idiot, lunatic, or insane person shall be produced to and inspected by the jury, and the jury shall also hear the testimony of such witnesses as may be brought before them, and may cause persons to be produced and examined in their presence touching such alleged idiocy, lunacy, or insanity.*

Inquisition.

SECT. 171. If the jury shall decide from such inspection and testimony that such person is lunatic, insane, or an idiot, they shall make up and sign their finding thereof in writing, and deliver the same to the sheriff, who shall forthwith thereafter return such inquisition and file the same in the proper clerk's office.

The inquisition of the jury may be traversed.

SECT. 172. The party proceeded against, or any person admitted by the court to defend for him, may traverse the inquisition on its return, and if so traversed, an issue shall be directed by the court, which shall be tried before such court by a jury.

Guardian.

SECT. 173. If the inquisition, as returned by the sheriff, shall not be traversed as aforesaid, or if the verdict of the jury, as provided in the last preceding section, shall sustain such inquisition, the court shall proceed to appoint a guardian or guardians, not exceeding three in number, to take the custody and care of the person and estate of such idiot, lunatic, or insane person.

* The opinion of a witness not being a medical man, as to a persons's insanity, is not admissible evidence, unless the facts on which it is based have come under his own observation, and unless he state those facts to the jury. *Doe* v. *Reagan*, 5 Blackf. 217.—See *Yeates* v. *Reed*, 4 Blackf. 463.

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ARTICLE 9.

Duties of guardian.

SECT. 174. It shall be the duty of such guardian or guardians to take such care of the estate of their ward as may be necessary for the preservation and best management of the estate of such ward, and for his support and for the support and education of his family, if he have any.

Same subject

SECT. 175. In the care, custody, and management of their wards, and the estates of such wards, every such guardian shall be governed by the provisions of law contained in the second part of these Revised Statutes respecting guardians and wards.*

Effect of such inquisition on pending suits, &c.

SECT. 176. As soon as it is determined by the inquisition returned by the sheriff, that such person is insane, a lunatic, or an idiot, all suits, judgments, proceedings, and executions then pending against him, shall be suspended until the appointment of a guardian or guardians, and then the same shall be proceeded in and conducted in like manner against such guardian or guardians, as in cases of judgments against a deceased person, and of suits and proceedings which survive against executors and administrators, during the continuance of such guardianship.

May proceed against guardian.

Guardian prosecute suits pending in favor of ward, as guardian or as next friend.

SECT. 177. If any suit be pending in favor of such ward at the time such inquisition is returned, the same shall be prosecuted by the guardian as such, if the right of action would survive to his personal representatives; and by such guardian as the next friend of such ward, if the right of action would survive to his heirs.

Action by and against ward, how prosecuted and defended.

SECT. 178. All actions which might be brought by or against any such ward, may be instituted by or against his guardian or guardians, except where the right of action would survive against his heirs at law, in which case the action shall be against such ward, and such guardian or guardians may defend as guardian ad litem.

Contract of lunatic, &c. void.

SECT. 179. Every contract, bargain, sale, conveyance, or act of any person, while insane, an idiot, or a lunatic, shall be void and of no effect in law.†

Court may decree that guardian shall convey, &c.

SECT. 180. The circuit courts of this state sitting in chancery shall have authority to decree and compel the specific performance of any bargain, contract, or agreement which may have been made by any lunatic or other person specified in the first section of this article, while such lunatic or other person was capable to contract; and to direct the guardian or guardians to do and execute all necessary conveyances and acts for that purpose.

Idiot, lunatic, or insane pauper.

SECT. 181. Every idiot, lunatic, and insane person who is or shall become a pauper, shall be entitled to all the benefit of the laws of this state for the relief of the poor; and the overseers of the poor of the proper township, and all other persons concerned, shall govern themselves as to such paupers by the provisions of such laws.

* See ante, article 4, of chapter 35, page 607.

† The doctrine that an obligor or grantor shall not be permitted to stultify himself, in order to avoid his bond or conveyance, is not recognized in modern times. But that doctrine, were it recognized, would not prevent the heirs of an obligor or grantor from showing his incapacity to contract. *Harbison* v. *Lemon*, 3 Blackf. 51.

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PART III.

If insane person restored to his right mind, shall receive his property.

SECT. 182. In case any such lunatic, idiot, or insane person shall be restored to his right mind, and become capable of conducting his affairs, his real and personal estate shall be restored to him.

Person declared insane may file his petition stating his restoration to his right mind.

SECT. 183. Any person who shall have been heretofore, or who may hereafter be declared insane, a lunatic, or an idiot, may file his petition in the circuit or probate court where such inquisition was had, setting forth that such person is restored to his right mind.

Jury.

SECT. 184. Upon the filing of such petition the court shall direct the sheriff to summon a jury of twelve discreet and disinterested householders of the county, to inquire into the fact

Inquisition.

of such restoration; and such sheriff and jury, as to such inquisition, the production and examination of the party and witnesses, the making up and signing the finding of the jury, and returning the same, shall be governed in all respects by the provisions of this article respecting the first inquisition.

Inquisition may be traversed.

SECT. 185. When such inquisition is returned, if the jury find that such person is restored to his right mind, any responsible person who will become bound for the costs may traverse such finding; or if such jury find that such person is not restored to his right mind, such person may in like manner traverse such finding.

Issue, how tried.

SECT. 186. When an issue is made up, the court shall direct the same to be tried before them by a jury.

Effect of verdict in favor of the petitioner.

SECT. 187. If on such inquisition or on the trial of such issue, when any such issue is made, such person be found to be in his right mind, he shall be restored to all his rights, powers, and duties which may have been vested in or devolved upon such guardian or guardians, and their authority shall cease and determine.

Verdict against him.

SECT. 188. But if the finding on such inquisition or the determination of any such issue be, that such person is not restored to his right mind, then the proceedings thereon shall be dismissed.

If adjudged to be restored to his right mind, how pending suits, &c. affected.

SECT. 189. When any such person is adjudged to be restored to his right mind, all judgments, executions, and suits then pending by or against the guardians of such person may survive and continue, and be prosecuted to final judgment and execution by or against such petitioner, in the same manner as if such suit or other proceeding had been originally commenced by or against him in his proper person; and such guardian or guardians shall be liable to account to such petitioner in the same manner as is provided for the accounting of guardians in other cases.

In case of the death of any such ward, powers of guardian to cease, &c.

SECT. 190. In case of the death of any such idiot, lunatic, or insane person, the powers of his guardian or guardians shall cease, and his executors or administrators shall proceed in the settlement and adjustment of his estate, as in other cases.

Contracts of guardian, &c., in such case, how enforced, &c.

SECT. 191. All valid contracts respecting the estate of such person made by any such guardian or guardians, shall, upon his decease, be performed and enforced by his legal or personal representatives in like manner as contracts made by a deceased person before his decease.

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ARTICLE 1.

Complaint before a justice that insane person is dangerous. Jury.

SECT. 192. When complaint shall be made before any justice of the peace, on oath, that any person is insane and dangerous to the community, by being suffered to remain or run at large, such justice shall issue a writ to a constable, commanding him to summon twelve reputable householders or freeholders of the township, to inquire upon oath touching such complaint.

Verdict and proceedings thereon.

SECT. 193. If such jury find that such person is insane, it shall be the duty of such justice of the peace to appoint some suitable person to take charge of such insane person, who for his services shall be allowed a reasonable compensation by the county commissioners of the county, to be paid out of the county treasury.

Justice shall certify his proceedings to circuit court.

SECT. 194. The justice, immediately after such appointment, shall certify a full transcript of his proceedings to the circuit court, and such court shall proceed thereon as in cases of a petition as above in this article provided; and if such insane person have any property, such court may order the same, or so much as may be necessary, to be applied to the payment of the county for its expenditures as above provided.

CHAPTER 47.

OF COURTS OF JUSTICES OF THE PEACE; AND OF THE DUTIES OF CONSTABLES.

ARTICLE 1. Of the jurisdiction of justices of the peace in civil cases.
ARTICLE 2. Of the commencement of suits, the service and return of process, and change of venue.
ARTICLE 3. Of the appearance of the parties.
ARTICLE 4. Of the pleadings.
ARTICLE 5. Of continuances.
ARTICLE 6. Of witnesses and depositions.
ARTICLE 7. Of the trial of issues of fact and the incidents thereto.
ARTICLE 8. Of judgments; and of transcripts thereof to bind real estate.
ARTICLE 9. Of appeals.
ARTICLE 10. Of removal of causes to the circuit court by writ of certiorari.
ARTICLE 11. Of the action of replevin.
ARTICLE 12. Of executions, and sales thereon: of delivery bonds: of process against the body of the execution debtor: suits against constable for failure to pay or return execution.
ARTICLE 13. Of constables and their duties.
ARTICLE 14. Miscellaneous provisions.
ARTICLE 15. Of forms for justices of the peace.

ARTICLE I.

Of the jurisdiction of justices of the peace in civil cases.

SECTION
1. Limited generally to their townships.
2. In what actions and to what amount.
1. Debt, covenant, and assumpsit, to $100. 2. Trespass, trover, replevin, and actions of tort, to $50.
3. Domestic attachment, to $100.
4. By and against corporations, executors, &c.

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PART III.

SECTION
3. No jurisdiction where, 1. Title to land comes in question. 2. In slander. 3. Marriage contract. 4. Where related to either of the parties.
4. Process limited to the township, except, 1. Where a capias should issue. 2. When no justice in the proper township. 3. Where no disinterested justice in the proper township. 4. When some of the defendants reside out of the township. 5. In trespass to real or personal property, and defendant resides out of the township.
5. Concurrent jurisdiction with the circuit court and probate court, in debt and assumpsit, between $50 and $100, and exclusive where a written instrument is reduced to $50.
SECTION
6. Actions on written demands reduced to $100 may be before justice.
7. On penal bonds where less than $100 is demanded.
8. Same on official bonds.
9. Certified copy of official bond to be evidence.
10. Plaintiffs to pay costs in circuit court in suits exclusively cognizable before justice.
11. Justice may administer oaths, issue subpœnas, and take acknowledgment of deeds, &c.
12. Powers in the preceding section may be exercised over the county.
13. To keep docket and furnish transcript.

Limited to townships.

SECTION 1. The jurisdiction of justices of the peace in civil cases shall, unless otherwise directed by law, be limited to the townships wherein they may have been elected; and every justice of the peace is hereby authorized to hold a court for the trial of all actions enumerated in the next section, and to hear, try, and determine the same according to law and right.

In what actions, and to what amount.

SECT. 2. Every justice of the peace shall have jurisdiction over and cognizance of the following actions and proceedings, subject to the provisions of the next following section.

Debt, covenant, and assumpsit to $100.

1. Actions of debt, covenant, and assumpsit, wherein the debt or damages claimed or confessed shall not exceed the sum of one hundred dollars. *

2. All actions founded in tort, wherein the damages demanded, or the value of the property claimed, does not exceed the sum of fifty dollars.

* See sections 5 and 6 of this chapter.

If a purchaser of real estate at sheriff's sale refuse to pay the purchase money, he may be proceeded against by notice and motion before a justice of the peace, if the notice set forth a claim not exceeding $100. *Cowgill* v. *Wooden*, 2 Blackf. 332. And see *Steepleton* v. *McNeely*, 6 Blackf. 76.

An action of debt may be brought in this state upon the judgment of a justice of the peace in another state; but a scire facias to procure the award of an execution on such a judgment does not lie. *Hoagland* v. *Rogers*, 3 Blackf. 501.

A justice of the peace has no jurisdiction in an action of debt, or on the case, against a constable for an escape, if the demand exceed fifty dollars. *Forsha* v. *Watkins*, 4 Blackf. 520.

The statement of demand filed before a justice, need not show that the justice has jurisdiction of the suit; but if such statement show the justices want of jurisdiction, the suit will he dismissed. *Perkins* v *Smith*, 4 Blackf. 299. *Alexander* v. *Peck*, 5 Blackf. 308.

The declaration (in assumpsit) in a justices court contained three counts, each claiming fifty dollars, and had no conclusion limiting the amount claimed. *Held*, that the suit should be dismissed for want of jurisdiction. *Swift* v. *Woods*, 5 Blackf. 97.

The declaration in debt before a justice of the peace contained four counts, each for 62 dollars. *Held*, that the justice had no jurisdiction. *Wetherill* v. *The Inhabitants*, &c, 5 Blackf. 357.

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ARTICLE 1.

3. Actions commenced by domestic or foreign attachment as provided by law, whenever the debt or damages claimed shall not exceed the sum of one hundred dollars;* Domestic and foreign attachment.

4. Actions by and against the State Bank of Indiana, and all other corporate bodies; and by and against executors, administrators, and guardians, subject to the provisions and restrictions of this section.† By and against corporatons, executors, etc.

SECT. 3. But no justice of the peace shall have cognizance of any action, No jurisdiction when,

1. Wherein the title to lands or tenements shall come in question; nor‡ Title to lands in question.

2. In actions of slander; nor In slander.

3. In any action for the recovery of damages for the breach of any marriage contract; nor In marriage contract.

4. In any action by or against any person or persons with whom he may be related in any of the degrees of affinity or consanguinity. When a relative of either party.

SECT. 4. No person shall be held to answer to any process issued against him by a justice of the peace in a civil matter, in any township of such county other than the one where he shall actually reside, except in the cases following:§ Process limited to township.

1. Where, according to law, a capias ad respondendum shall be the proper process to be issued, in which case the jurisdiction of the justice shall be coextensive with his county; Except when a capias.

2. Where there shall be no justice of the peace for the township in which the defendant may reside; or no justice competent to act in such case; When no justice in the proper township:

3. Where any relationship, either by affinity or consanguinity, exists between the justice and either of the parties, and there is no justice in the township competent to try the cause; Or the justice in such township is a relative of either party.

4. When two or more persons shall be jointly or jointly and severally bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different townships of the same county, the plaintiff may commence his action before a justice of the peace of the township in which any of the debtors or other persons liable may reside; and the justice before whom such action may be brought shall issue process against such debtors or other persons, directed to any constable of his township; which process such constable shall be authorized to serve and return, wherever the defendants may be found in the county; and the defendants shall be compelled to answer thereto; and all such other proceedings shall be had therein as if all the defendants resided in the township in which such action was commenced; When process may be executed out of township in case of several defendants.

* See ante, pp. 761, 772.

† See ante, page 557, section 377.

‡ See post, sections 54, 55, 56, of this chapter.

§ The want of jurisdiction of the justice may be pleaded or given in evidence under the general issue. *Perkins* v. *Smith*, 4 Blackf. 299.

The defendant in a justice's court may show under the general issue, that the process had not issued in the proper township. *Thomas* v. *Winters*, 4 Blackf. 161.—*M'Cormick* v. *Maxwell*, 4 Blackf. 168.

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PART III.

When in case of trespass.

5. In cases of trespass to real or personal property, it shall be lawful to bring the action in the township where the trespass was committed; and if the trespasser reside in another township in the same county, the justice before whom such action may be brought, shall have power to isue such process directed to any constable of his township, who shall serve the same on the defendant or defendants where he or they can be found within the county, and make his return thereof to the justice who issued such process; and the defendant or defendants shall be held liable to answer such process in the same manner as if he or they resided in the township in which such action was instituted.

Jurisdiction concurrent in certain cases.

SECT. 5. In all actions of debt, covenant, or assumpsit, wherein the sum due or demanded shall exceed fifty dollars and not exceed one hundred dollars, exclusive of interest and costs, justices of the peace and circuit courts shall have concurrent jurisdiction; and in like circumstances in actions by and against executors, administrators, and guardians they shall have concurrent jurisdiction with probate courts; but whenever the original amount specified in any note, bill, or other instrument in writing, given for the payment of money or other valuable article, shall have been reduced, by credits endorsed thereon, to an amount not exceeding fifty dollars, exclusive of interest, suit thereon shall be commenced before a justice of the peace.*

Exclusive on written contracts reduced to $50.

When claim is reduced by credits to $100.

SECT. 6. In all actions where the plaintiff's demand on an account, or on a note, bill, bond, or other instrument in writing given for the payment of money or other valuable article, for any amount over one hundred dollars, has been reduced by payments or credits endorsed thereon, to a sum not exceeding one hundred dollars exclusive of interest, the same may be prosecuted before a justice of the peace who is authorized to render judgment and execution thereon.

On penal bond.

SECT. 7. Where there shall be a bond with a penalty exceeding one hundred dollars, with a condition for the payment of money not exceeding one hundred dollars, or in specific articles not exceeding one hundred dollars in value, or where the sum actually demanded does not exceed one hundred dollars, or where there shall be a bond or promissory note for the payment of several sums of money or specific articles by instalments, any of which instalments does not exceed one hundred dollars, an action may be maintained on the conditions of such bond, or on the instalments of such note separately, before a justice of the peace; and a recovery on one of the conditions or instalments shall not be a bar to a subsequent suit or suits on the other conditions or instalments, or any of them.

On official bond.

SECT. 8. All bonds with penalty, conditioned for the performance of the duties of any public officer, may be sued on before a justice of the peace, where the damages sought to be recovered for the breach or breaches of any condition of such bond do not exceed the sum of one hundred dollars.

*See section 10, of this chapter.

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SECT. 9. A certified copy of such official bond, made by the officer with whom it has been deposited and filed according to law, attested by the seal of his office, if he have one, or if not, by his ink seal or scrawl, shall be considered and received as competent proof of such bond and the execution thereof. Certified copy of such bond to be evidence.

SECT. 10. Should any plaintiff bring his action in a circuit court to recover a debt or demand cognizable before a justice of the peace, except where the courts have concurrent jurisdiction, such plaintiff shall be adjudged to pay all costs incurred therein, except in cases wherein the title to land shall come in question. When plaintiff to pay costs of suit in circuit court.

SECT. 11. Justices of the peace shall have power, and they are hereby authorized to administer any oath required by law to be taken or administered, to grant and issue subpœnas for witnesses, and coerce their attendance, in a cause or matter pending before them, or other cause or matter where they may be required to take testimony; and to take the acknowledgment and proof of the execution of deeds, mortgages and other instruments in writing. Justice may administer oaths, issue subpœnas, take acknowledgment of deeds, &c.

SECT. 12. Their jurisdiction in the exercise of the powers designated in the last preceding section shall be co-extensive with the county in which they have been elected. Throughout county.

SECT. 13. Every justice of the peace shall keep a docket, in which he shall make a fair and accurate entry of all actions and suits instituted before him, with his proceedings thereon; and either party shall be furnished with a transcript thereof, when demanded, on paying the lawful fee therefor. To keep docket, and furnish transcripts.

ARTICLE II.

Of the commencement of suits, the service and return of process, and change of venue.

SECTION

14. Suits may be commenced by agreement or process.
15. Are considered commenced on delivery of process to constable: day of delivery to be noted thereon.
16. Without process, when docketed.
17. When a summons the first process; sum demanded to be endorsed.
18. Same to specify a time and place to appear, not less than three nor more than thirty days.
19. Time and manner of service.
20. How, if defendant is absent for an uncertain period.
21. Same in sci. fa.
22. Oath required on issue of a capias.
23. Service and return of capias, and notice to plaintiff.
24. Trial to be had in twenty-four hours: when before another justice.

SECTION

25. Proceedings the same as if commenced before him: dismissal if not proceeded with.
26. Habeas corpus allowed defendant.
27. Change of venue, for what cause, and when allowed. 1. Justice being a witness. 2. Interested or prejudiced. 3. Citizens of township prejudiced, &c., party an undue advantage, &c.
28. Change, when to a justice of the same or an adjoining township.
29. Justice to transmit papers, &c. and proceedings thereon.
30. Costs to be first paid or replevied by applicant.
31. What costs are to be charged when change is taken by plaintiff.
32. What, when taken by defendant.

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PART III.

Suits commenced by agreement or process.

SECT. 14. Suits may be instituted before a justice of the peace, either by the voluntary appearance and agreement of parties, or by process.*

Commenced when process is delivered to constable. Time to be noted thereon.

SECT. 15. A suit shall be considered to have been commenced on the delivery of the process to a constable to be served; and the day of the month when he received the same shall be noted thereon by the constable.

Commenced without process when docketed.

SECT. 16. When a suit is instituted without process, it shall be considered to have been commenced at the time of docketing the cause.

Summons, when the first process.

SECT. 17. Except in cases specially provided for by law, a summons shall be the first process to be issued by virtue of this article; and on every process issued by a justice of the peace, in actions founded on debt or contract, he shall endorse the precise sum demanded by the plaintiff, together with the costs that have accrued. †

Amount demanded, when to be endorsed.

To specify a time and place to appear.

SECT. 18. Such summons shall specify a certain time, not less than three nor more than thirty days from the date thereof, and also a certain place at which the defendant shall appear.

Time and manner of service of summons.

SECT. 19. Such summons shall be served at least three days before the day of trial, exclusive of the day of service, and including the day of such trial, by reading the same to the defendant, or by serving him with a copy, if demanded, or by leaving a copy at his usual place of residence, if he be absent.

How, if defendant's absence is uncertain.

SECT. 20. If an absent defendant shall have left his usual place of residence, for any time which will render the time of his return uncertain, the constable being apprised thereof, shall not leave a copy, but shall return the summons, noting the fact in his return; and in such case, alias and pluries summons may issue from time to time, until service thereof.

Same in sci. fa.

SECT. 21. The same course may be pursued in cases of scire facias.

Affidavit required for issue of a capias.

SECT. 22. Whenever a person shall make satisfactory proof to a justice of the peace, by his affidavit, or the affidavit of any other person on his behalf, that he has a just and legal claim, debt, or other demand, then due and owing, against any person residing or then being in the county of such justice of the peace, and stating that he believes that the defendant is about to leave the state of Indiana, taking with him property subject by the laws of this state to execution, or other means or effects with which he might pay such debt, or some part thereof, with intent to delay or defraud his creditors, it shall be the duty of such justice, upon the filing of such affidavit, to issue a capias ad respondendum against the person so charged.

* See section 98 of this chapter.

† The defendant, in a suit in a justice's court, cannot object to the writ for want of an endorsement on it of the sum claimed, after he has appeared and pleaded to the action. *Swift* v. *Wood*, 5 Blackf. 97.

A writ was issued by a justice of the peace in the name of *J. & R. M. Secrest*, plaintiffs. *Held*, that a motion of the defendant to dismiss the suit, made before his appearance and plea to it, should be sustained. *Secrest* v. *Arnett*, 5 Blackf. 366.

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ARTICLE 2.

SECT. 23. Such capias ad respondendum shall be made returnable forthwith after the service thereof, and the constable serving the same shall, according to the command thereof, forthwith arrest the defendant, and convey him before the justice who issued it, and notify the plaintiff, his agent or attorney of such service. Return, service and notice to plaintiff.

SECT. 24. When a defendant shall have been arrested on such capias, he shall be entitled to a speedy trial, and shall in no case be detained in custody longer than twenty-four hours from the time he may have been brought before the justice, unless within that time the trial of the cause shall have commenced; and whenever the justice who issued the capias shall be absent, or unable to hear and try the cause, the constable shall take the defendant before the next justice in the same township; or if there be none legally competent to try the cause in that township, then to the nearest justice in an adjoining township. Trial in 24 hours, unless, &c. When before another justice in that or adjoining township.

SECT. 25. In such case, the plaintiff shall file his cause of action with such justice, and the suit shall proceed in all respects as if the same had been commenced before such justice; or if such plaintiff fail to file any cause of action before such justice within twelve hours after he shall have received notice of such arrest, the defendant shall be discharged. Proceedings in such case: cause of action to be filed, or suit dismissed.

SECT. 26. Any person arrested by virtue of a capias ad respondendum, issued by a justice of the peace, shall have all the rights and privileges of, and may be discharged in like manner by, a writ of habeas corpus, as is provided in cases of arrest on process issued out of a court of record. * Defendant to have privilege of habeas corpus.

SECT. 27. If, on the return of any process, or at any time before any trial shall have commenced, it shall be made satisfactorily to appear to the justice of the peace before whom any cause is instituted or is pending for trial, by the affidavit of either of the parties in the cause, Change of venue, for what cause, and how allowed. Affidavit.

1. That such justice is a material witness in the cause for either party; or, Because justice is a witness.

2. That he verily believes he cannot have a fair and impartial trial before such justice, for the cause of any interest, bias, or prejudice of such justice; or, Interested or prejudiced.

3. If a jury be demanded by the adverse party, then that he cannot, as he verily believes, have a fair and impartial trial in such township, on account of the bias or prejudice of the citizens thereof against him, or because such adverse party has an undue advantage over him in such township; Citizens of township prejudiced, &c.

Such action shall be removed for trial before some other justice of the peace.

SECT. 28. If such change of venue be granted for any objection to such justice, on account of his being a material witness in the cause, or on account of the interest, bias, or prejudice of such justice, such cause shall be transferred for trial before some other justice of the peace of the same township, if Granted for objection to justice, change to be before justice of same township.

* See ante, page 674, section 21.

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PART III.

there be one therein legally competent to try such cause; if there be no such justice within such township, or if such change of venue be granted on account of the bias or prejudice of the citizens of such township against such party, or because the adverse party has an undue advantage over him therein, then such change of venue shall be taken to some convenient justice in an adjoining township of the same county.

If for objection to citizens, to justice of adjoining township.

Papers, &c. to be transmitted, and proceedings thereon.

SECT. 29. The justice granting such change shall deliver or transmit the papers in the cause, together with a certified transcript of the proceedings before him, to the justice to whom such change may be granted, who shall proceed therein, and have the same jurisdiction, powers, and duties, in all respects whatever, as if such suit had been originally instituted before him.

Costs to be first paid or replevied.

SECT. 30. But before any such change of venue shall be allowed, the costs, as specified in the two next following sections, shall be paid by the party applying for such change, or he shall have confessed judgment therefor before the justice granting the change and replevied the same.

Costs, when change taken by plaintiff.

SECT. 31. When a change of venue is taken by the plaintiff, he shall be taxed with all the costs which have accrued, and which shall accrue in the cause, until such transcript and papers shall be delivered to the justice to whom such change is taken.

Costs, when taken by defendant.

SECT. 32. When a change of venue shall be granted on the application of the defendant, he shall be taxed with the costs which have accrued for issuing subpœnas for witnesses and service thereof, witness' fees, and the costs of the justice for transferring the cause to the docket of the other justice.

ARTICLE III.

Of the appearance of the parties.

SECTION
33. When appearance shall be in person or by attorney.
34. Next friend must be appointed for infant plaintiff.
35. Justice to appoint: — shall be responsible for the costs.
SECTION
36. Guardian ad litem, how appointed for infant defendant.
37. Infant defendant failing to appear, justice to appoint: guardian not responsible for costs.
38. Justice and constable forbid to act as attorney, etc.

Appearance, when in person or otherwise

SECT. 33. Parties in a suit before a justice of the peace, except persons under twenty-one years of age, may appear and conduct their suit, either in person or by attorney; but where a suit shall have been commenced by a capias ad respondendum

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no further proceedings before the justice shall be had against the defendant until he shall have appeared in person.*

Infant plaintiff must have next friend.

SECT. 34. No process shall be issued for an infant plaintiff, nor shall any issue joined by such plaintiff without process, be heard until a next friend for such plaintiff shall have been appointed.

Justice to appoint.

Responsible for costs.

SECT. 35. Whenever requested, the justice shall appoint some suitable person, who will consent thereto in writing, to be named by such plaintiff, to act as his next friend in such suit, who shall be responsible for the costs therein.

Infant defendant, guardian how appointed.

SECT. 36. After service and return of process against an infant defendant, the suit shall not be any further prosecuted until a guardian for him be appointed; and upon the request of such defendant, the justice shall appoint some discreet person guardian ad litem, who will consent thereto in writing.

If infant defendant fail to appear, justice to appoint.

Not responsible for costs.

SECT. 37. If the defendant shall not appear on the return day, or if he neglect or refuse to nominate such guardian, the justice may, on motion of the plaintiff, appoint any discreet person such guardian; and the guardian for a defendant shall, in no case, be liable for costs.

Justice and constable forbid to act as attorney, etc.,

SECT. 38. No constable or justice of the peace shall be allowed to appear and act as attorney, advocate, or agent of either party on the trial of a cause, unless he be an attorney at law.

ARTICLE IV.

Of the pleadings.

SECTION

39. Cause of action or statement, etc., when to be filed in cases commenced by summons.
40. Statement of defence, set-off, etc., when to be filed.
41. Specific breach need not be assigned on official bonds.
42. Amendments before trial—evidence confined to the statements and pleadings filed.
43. General issue always in—Oath thereto required when it denies a written instrument.
44. Want of form shall not vitiate—nor misnomer of action.

SECTION

45. Plaintiff in assumpsit must include all his demands.
46. When pendency of suit by summons not to bar one by capias.
47. What pleas in abatement must be on oath.
48. What pleas of non est factum and non assignment to be on oath.
49. Form of oath to a plea of non assignment.
50. Set-off, when allowed against executors and administrators.
51. Judgment may be pleaded as set-off.
52. Transcript thereof, evidence.

* A judgment of a justice against a defendant is a nullity, unless the defendant had actual or constructive notice of the suit or appeared to it. *Anderson* v. *Miller*, 4 Blackf. 417.

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PART III.

SECTION
53. Set-off or payment may be by special plea or notice.
54. Plea of title to land, when to be filed —oath required.
SECTION
55. Title set up, cause to be certified to circuit court.
56. Proceedings thereon.

Cause of action or statement, when to befiled.

SECT. 39. In all suits commenced by summons before a justice of the peace, the plaintiff shall, at least three days before the return day thereof, file with the justice a concise statement in writing of his cause of action, or the nature of the wrong and injury of which he complains, if it be founded on tort; and in actions on contract the account, note bill, bond, or other writing, bill of particulars, or other statement in writing of the nature of the demand on which he intends to rely.*

Statement of defence or set-off, etc., to be filed.

SECT. 40. The defendant, if he appear on the return day of the summons and have any special matter of defence in actions of tort, or any special matter of payment, set-off, or other affirmative plea in actions on contract, shall, on or before the calling of the cause, file the same or a succinct statement thereof in writing.

Specific breaches on official bond not necessary.

SECT. 41. In actions against public officers on their official bonds, it shall not be required of the plaintiff to assign any specific breach or breaches of the conditions of such bonds.

Amendment before trial.

Evidence restricted to statements and pleadings filed.

SECT. 42. Either party may be permitted by the justice to amend his statement before entering into trial; and neither party shall be permitted to give evidence of any cause of action or defence or any item thereof not filed as above directed, or not contained in his written statement or bill of particulars; except such matters as may be given in evidence under the general issue or may be necessary to rebut the testimony or matters shown by the adverse party; but in actions founded in tort

* Any statement of the cause of action, however short or informal it may be, will answer the purpose, provided enough be shown to bar another action for the same demand—*Denby* v. *Hart*, 4 Blackf. 13.—See *Bell* v. *Trotter*, 4 Blackf. 12—and to apprise the defendant of the nature of the claim. *Smith* v. *Trustees, etc.*, 5 Blackf. 40.

In a justice's court, an article of agreement between the parties, containing conditions precedent, to be performed by the plaintiff, may be filed as the cause of action without an averment of the performance of the conditions. *Wiley* v. *Shank*, 4 Blackf. 420.

In a suit before a justice of the peace, a bond with a condition which appears to have been executed between the parties to the suit, may be filed as the cause of action without an assignment of breaches. *Vandagrift* v. *Tate*, 4 Blackf. 174.—*Evans* v. *Shoemaker*, 2 Blackf. 237.

The filing of a delivery bond before a justice of the peace, as a cause of action, is sufficient without a declaration. *Barber* v. *Summers*, 5 Blackf. 339.

NOTE.—If the penalty of the bond be more than one hundred dollars, the cause of action must show that the amount claimed does not exceed one hundred dollars, or the suit will not be within the jurisdiction of the justice. *See Washburn* v. *Payne*, 2 Blackf. 216.—*Remington* v. *Henry*, 6 Blackf. 63.

In a suit commenced before a justice of the peace, by the assignee against the assignor of a promissory note, the plaintiff need only file, as a cause of action, the note with the assignment. *Watson* v. *New*, 4 Blackf. 313.

A note payable to a woman, who is one of two plaintiffs in a suit before a justice of the peace, is not a sufficient statemant of the cause of action, without an averment of her marriage with her co-plaintiff. *Vandagrift* v. *Tate*, 4 Blackf. 174.

When a written contract between the litigating parties is filed as the cause of action in a justice's court, the want of an averment of extraneous facts connected with the contract and necessary to be proved on the trial, is not a fatal objection, if enough be stated to bar another suit for the same demand. *Cook* v. *Hedges*, 6 Blackf. 184.

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the defendant may, in all cases, show every matter of defence under the general issue.*

General issue although always allowed, oath required when it denies a written instrument.

SECT. 43. The defendant shall always have the benefit of the general issue, with or without pleading it, except that proof of the execution of any instrument, which is the foundation of the plaintiff's action, or set forth in the statement of his cause of action, shall not be required by reason of the general issue, unless the same be pleaded and verified by oath.†

Pleadings not bad for want of form.

SECT. 44. No statement of the cause of action or pleading in any cause shall be defeated in a suit before a justice, or on appeal from his judgment to the circuit court, for want of form; and no misnomer of an action, either in the process or pleadings, shall justify a dismissal thereof.‡

Misnomer.

Plaintiff in assumpsit to include all demands then due.

SECT. 45. In actions of assumpsit founded on open and running accounts between the parties, the plaintiff's bill of particulars shall include all the running accounts in his favor against the defendant, which shall have accrued up to the time of instituting such suit, then due and unpaid; and on neglect so to do, and on proof thereof by the defendant, in any subsequent suit therefor, against him, such plaintiff shall be adjudged to pay the costs of such suit.

Or he must pay costs of subsequent suit.

Suit by summons, when not a bar to suit by capias.

SECT. 46. The pendency of a suit by summons shall not be a bar to a subsequent suit commenced by capias between the same parties, and on the same cause of action, if it appear on the trial of such subsequent suit, that the defendant had done, or was about to do, any of those acts which render the institution of a suit by capias lawful.

Plea in abatement, when to be on oath.

SECT. 47. No plea or statement in the nature of a plea in abatement, other than to the jurisdiction of the justice or for matter appearing on the face of the plaintiff's statement, shall be received by the justice, unless supported by oath or affirmation.§

When pleas of non est factum and non-assignment to be on oath.

SECT. 48. The plea of non est factum, non-assignment, or any other plea, replication, or other pleading, denying or requiring proof of the execution or assignment of any bond, bill,

* In actions on contract commenced in a justice's court, the defendant may, under the general issue, give any matters in evidence which, under that plea, are admissible in other courts. See *Cowgill* v. *Wooden*, 2 Blackf. 332.

† The defendant in a justice's court has the benefit of the general issue, though it be not pleaded, and though a special plea be filed. *McHatton* v. *Bates*, 4 Blackf. 63.

A promissory note was filed as the cause of action before a justice of the peace, and the general issue pleaded without oath. *Held*, that the execution of the note was admitted. *Parry* v. *Henderson*, 6 Blackf. 72.

In a suit on a note before a justice of the peace, evidence that the plaintiff, in consideration that the defendant would pay him a certain sum, agreed to forbear to sue for a certain time, &c., is admissible under the general issue. *McClelland* v. *Quarles*, 3 Blackf. 459.

‡ The jurisdiction of the justice is determined by the nature of the complaint, and not by the mere name of the action. *Forsha* v. *Watkins*, 4 Blackf. 520.—Hence, if an action were founded on a tort, its designation as an action of debt, or other action on contract, would certainly not give the justice jurisdiction where the amount claimed exceeded fifty dollars.

A count in tort cannot be joined with one on contract even in a suit before a justice of the peace. *Etchison* v. *Post*, 5 Blackf. 140.

§ A plea to the jurisdiction of the justice in assumpsit was not sworn to; but the plaintiff went to trial on it before the justice of the peace, and on appeal in the circuit court, without mentioning the defect. *Held*, that the objection was waived. *McCormick* v. *Maxwell*, 4 Blackf. 168.

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release, or other instrument in writing, which is the foundation of any suit or defence, and is especially set forth as such in the declaration, plea, or other pleading, shall not impose the necessity of such proof, unless verified by oath or affirmation.

Form of oath to plea denying assignment.

SECT. 49. When any such pleading or statement denies or requires proof of any assignment, the oath or affirmation shall be that the party has reason to believe, and does believe, that the assignment was not made before the suit was commenced.

What demands may be set off in suits by executors and administrators.

SECT. 50. In suits brought by executors and administrators on demands of the deceased, the defendant may set off demands existing against their testator or intestate belonging to the defendant at the death of any such testator or intestate, in the same manner as if the action had been brought by or in the name of the deceased.

Judgment may be pleaded as set-off.

SECT. 51. Whenever any action upon any contract, express or implied, is pending before a justice, it shall be lawful for the defendant to plead, or give notice thereof as a set-off, any judgment rendered in his favor by any justice of the peace or court of record in this state, against the plaintiff, or any such judgment that has been legally transferred to him before the commencement of such action.*

Transcript to be evidence.

SECT. 52. Upon the trial any such judgment may be proved by a transcript thereof, under the hand and seal of the proper officer.

Set-off or payment may be by special plea or notice.

SECT. 53. Whenever the defendant has any special matter of set-off or payment, he may specially plead the same or give notice thereof by filing a bill of particulars or a succinct statement thereof in writing.

Plea of title to land, when to be filed; oath required.

SECT. 54. In every action instituted before a justice of the peace where the title to lands and tenements shall in any wise come in question, the defendant, at any time before entering upon the trial, may plead specially any plea showing that the title of lands will come in question; but no such plea shall be received by the justice unless the same be verified by oath or affirmation, to be true as the affiant verily believes.

Proceedings on such defence of title being made.

SECT. 55. When such plea is filed, or when it shall appear on the trial by the proof, that the title to lands and tenements is necessarily involved, the justice shall proceed no further in the cause, but shall forthwith make out a transcript of his proceedings therein, and within twenty days thereafter file the same, with all the papers belonging to such cause, in the office of the clerk of the proper circuit court.

Same.

SECT. 56. Such cause shall be docketed by the clerk, and the court shall proceed therein in the same manner as if such cause had been originally commenced in such court, without further notice or process.

* See post, sections 137—142, of this Chapter.

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ARTICLE V.

Of continuances.

SECTION
57. When allowed on a capias. 1. By consent. 2. On defendant's affidavit. How long: bail.
58. Form of such recognizance of bail.
59. Bail may surrender.
60. Continuance may be on application of either party for not over 60 days.
61. Not for defendant unless he will exhibit his set-off, &c.
62. Continuance for absent testimony limited to sixty days.
63. When asked for more than ten days, what must be disclosed.
64. When with or without costs.
65. Continuance, when on account of amendment of pleading.
66. Cause of action not being filed, defendant may continue at plaintiff's cost.
67. If jury demanded, continuance until next day.
68. Costs of continuance.
69. When continuance for absent of defendant at plaintiff's costs.
70. Defendant having been subpœnaed, costs to abide event of suit.
71. Depositions of witnesses then present may be taken.

Continuances, when allowed.

SECT. 57. No continuance of a cause commenced by capias shall be allowed, except in the following cases:

By consent.

1. By consent of both parties, for any time agreed upon, allowing the defendant to give special bail, if he desire it; or,

At request of defendant on affidavit.

2. On the application of the defendant, supported by his oath, that he has a good defence to the plaintiff's action, and that he is not ready to proceed to the trial thereof, stating specifically the grounds on which he asks a continuance;

When restricted to 30 days.

In which case it shall not be granted for a longer time than thirty days; or if granted on account of an absent witness, it shall not be for a longer term than sixty days at one time, allowing the defendant to give special bail, if he desire it.

When to 60, and bail required.

Form of recognizance of bail.

SECT. 58. The recognizance of bail to be taken as is above provided, may be in the following form:

State of Indiana, —— county, —— township, ss:

Whereas, A— B— has been arrested, and is in custody at the suit of C— D—, in an action of ——, for the sum of ——; Now therefore, I, E— F—, do acknowledge myself special bail for the said A— B— in said action, that he shall personally be and appear before J— H—, a justice of the peace of the township aforesaid, at his office therein, on the —— day of ——, at —— o'clock, in the ——noon, to answer to said suit, and not depart therefrom unless discharged according to law.

(Signed) E. F.

Taken and acknowledged this —— day of ——18—, before me. J. H., justice of the peace.

Bail may surrender.

SECT. 59. Any special bail may surrender his principal to the constable before trial; in which case it shall be the duty of the justice, unless the defendant give other special bail before the justice, to commit him to the prison of the county until the day set for trial; or the bail may surrender him to the justice at the time of trial, in discharge of his recognizance.

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PART III.

Continuance on application of either party. Limited to 60 days.

SECT. 60. A justice of the peace may grant a continuance of any cause, other than actions commenced by a capias, upon the affidavit of either party, if it shall be made satisfactorily to appear that justice requires such continuance; but the same shall not be for a longer time than sixty days.

No continuance for defendant, unless he will exhibit his set-off, &c.

SECT. 61. No continuance of any cause shall be allowed to a defendant, when the account or demand of the opposite party shall have been previously filed, unless the defendant applying for such continuance, if required thereto, shall exhibit his account or demand on which he relies as a set-off, or payment, if he have any such, as far as may be in his power, to the satisfaction of the justice.

Continuance on affidavit of absent testimony.

Limited to 60 days.

SECT. 62. In all cases before a justice, where either party makes affidavit that he has a material witness, or other material testimony, which he has not been able to procure after due diligence, and showing where such witness resides, if his residence be known, or where such testimony may be, and the probability of procuring the same within a reasonable time, and that such affidavit is not made for delay merely, but for the furtherance of justice, the justice shall continue such cause for any length of time which may be necessary, not exceeding sixty days.

If asked for over 10 days, to disclose the facts to be proved, and the want of any other witness.

SECT. 63. In all applications for continuances on account of the absence of a material witness, for a longer term of time than ten days, it shall be necessary for the party making such application to state also in his affidavit, the substance or principal facts expected to be proved by such absent witness, in order that the justice may judge of the materiality of such testimony, and that such party knows of no other witness by whom he can prove the same facts, whose testimony he can as readily procure.

May be with or without costs.

SECT. 64. All continuances granted by a justice of the peace, may be with or without costs to the party applying therefor, at the discretion of the justice, according to the circumstances of the case, and in conformity with the practice of the circuit court, unless otherwise specially provided for by law. *

Continuance, when allowed on account of amendment of pleadings.

SECT. 65. If either party amend the statement of his cause of action or defence, by adding to or striking out therefrom any material matter, before entering on the trial, and it shall be made to appear to the justice, by affidavit or otherwise, that the adverse party will be rendered less prepared to prosecute or defend the suit than he would have been if no such amendment had been made, he shall be entitled to a continuance for such a length of time as may be agreed upon by the parties, or as to the justice may appear reasonable, at the costs of the party making the amendment.

Plaintiff failing to file cause of action, defendant may continue.

SECT. 66. If the plaintiff shall not have filed his cause of action for the length of time required by the first section of the last preceding article, before the day of trial, such cause, if the defend-

* See ante, page 761, section 488.

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ant require it, shall be continued to such time as the justice shall deem reasonable, not to exceed ten days, nor less than three days, and the plaintiff shall pay the costs of such continuance.

Jury demanded, cause may be continued until next day.

SECT. 67. If, on the day set for the trial of the cause, either party demand a venire to issue for a jury, such cause shall be continued until the next day, or if the next day be Sunday, to the Monday next following, unless the opposite party shall agree to proceed to trial without such continuance; and if the cause be continued, the party demanding such jury shall pay the costs of such continuance; but if the jury were demanded before the day set for such trial, the provisions of this section shall not apply. *

Costs of continuance, what to include

SECT. 68. The party required to pay costs by the provisions of the last three preceding sections, shall be taxed with the costs of the continuance, including costs of subpœnas, and service and return thereof, and witnesses' fees for attendance on that day.

Continuance, when for defendant's absence.

At plaintiff's costs.

SECT. 69. If the plaintiff shall neglect to subpœna the defendant, whom he may desire to make a witness in the cause, and shall apply on the day set for trial for a continuance, on account of the non-attendance of such defendant, such continuance shall not be granted unless at the costs of the plaintiff, according to the rule prescribed in the last preceding section. †

If defendant is subpœnaed, costs to abide event.

SECT. 70. If a cause be continued on the motion of the plaintiff, on account of the absence of the defendant, after being subpœnaed to attend as a witness, the costs of such continuance shall abide the event of the suit; and the provisions of this and the preceding section shall apply in cases in which the defendant may desire to make the plaintiff a witness. †

Deposition of witnesses present to be taken.

SECT. 71. When any continuance is granted, either party shall be allowed the privilege of having any such witness or witnesses as he may desire, then in attendance, examined on oath, and his or their testimony reduced to writing, and certified by such justice, and left with the justice, and read in evidence on the trial of the cause, unless such witness be present; for which such justice shall be entitled to charge the same fees as in case of depositions, to be taxed with the costs of the cause.

ARTICLE VI.

Of witnesses and depositions.

SECTION	SECTION
72. When justice may take depositions.	75. Party must pay costs who subpœnas too many witnesses.
73. Who may serve subpœnas.	76. Alsowhen witness is not used, unless, &c.
74. No fees allowed when not served by an officer.	

* See post, sections 99, &c., of this chapter.

† See post, sections 81, 82, 83, 84, 85, 86, of this chapter.

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SECTION
77. Witness must claim fees before judgment is entered.
78. Attachments against witnesses, when allowed.
79. How executed; costs and fine thereon.
80. When party may sue witness.
81. When defendant may be examined as a witness.
82. When plaintiff may be examined as a witness.
83. May testify to the whole subject matter.
84. Parties resident of the county may be subpœnaed.
85. Judgment as confessed, &c. if party refuse to testify.
86. Parties being non-resident depositions may be taken.

SECTION
87. Same provisions applicable on appeals.
88. Depositions, in what cases taken, and rules.
89. Dedimus may issue; depositions to be endorsed and sent to justice.
90. Dedimus, to whom directed.
91. Depositions de bene esse.
92. Dedimus unnecessary in same county.
93. Manner of taking depositions.
94. When to be opened.
95. Depositions out of county may be without dedimus; notice required in all cases.
96. Authentication required, within or without this state.

In what cases depositions may be taken.

SECT. 72. Any justice of the peace may issue subpœnas to compel the attendance of witnesses to give evidence on any trial pending before himself or another justice of his county, or on a dedimus or any commission, or other lawful authority to take depositions or perpetuate testimony.*

Subpœnas, by whom served.

SECT. 73. A subpœna may be served either by a constable or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence.

No fees when not served by an officer.

SECT. 74. When not served by a constable or some person deputed for that purpose by a justice, no fees shall be charged in the suit for serving it.

Costs when too many witnesses are subpœnaed.

SECT. 75. If any party shall order a subpœna for or introduce on trial more than two witnesses to prove any one fact, such party shall pay the costs of such supernumerary witness or witnessess.

Costs when witness attends and is not used.

SECT. 76. If any witness having been subpœnaed attend, and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpœna, unless the adverse party, by confessing the matter, or otherwise, render unnecessary the examination of such witness.

Witnesses, when to claim attendance.

SECT. 77. Witnesses shall not be entitled to pay as such, nor shall a justice charge it in making up the costs of a suit, unless they shall have made their claim for their attendance before the entering up of the judgment.

Attachments for witnesses, when allowed.

SECT. 78. Whenever it shall appear to the satisfaction of a justice of the peace, by proof made before him, that any person has been duly served with a subpœna to appear and give testimony before him, in any matter in which he has authority to require such witness to appear and testify, that his testimony is material, and that he refuses or neglects to attend as such witness, in conformity with such subpœna, the justice shall have

* See ante, page 721, section 274.

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power to issue an attachment to compel the attendance of such witness. ARTICLE 6.

Attachments, how executed; costs and fine thereon.

SECT. 79. Every such attachment shall be executed in the same manner as a capias ad respondendum; and the fees for issuing and serving it shall be paid by such delinquent, together with such fine as the justice shall think reasonable, not less than one dollar nor more than three dollars, unless some reasonable excuse be shown, on the oath of such witness or of some other person; and a witness appearing and refusing to testify, when he ought to testify, may be fined not exceeding three dollars for every such refusal.

Witness, when liable to action of party subpœnaing him.

SECT. 80. Every person subpœnaed as aforesaid, and neglecting to appear, or refusing to testify, shall also be liable to the party in whose behalf he shall have been subpœnaed, for all damages which such party may sustain by reason of such non-appearance or refusal.

When defendant may be examined as a witness.

SECT. 81. In all trials of actions founded on contract, express or implied, before a justice of the peace, if the claim of the plaintiff, or any part thereof, be denied by the defendant, it shall be lawful for the plaintiff to require of the defendant to answer on oath to such claim; and if the defendant, when sworn, deny the same, the plaintiff shall not have judgment, unless he establish his claim by legal evidence.*

When plaintiff may be examined as a witness.

SECT. 82. Whenever the defendant in any such action shall allege matter of payment or set-off to the plaintiff's demand, or plead or set up any other valid special defence in bar, he may in like manner require the plaintiff to answer such plea or allegation on his oath.†

May testify to whole subject matter.

SECT. 83. The plaintiff or defendant, when so required to be sworn by his adversary, shall be at liberty to testify concerning the whole matter in controversy, both as to the cause of action and defence, as a disinterested witness might do.

Resident parties may be subpœnaed.

SECT. 84. Either party residing in the county where such action is pending, may, at the request of his adversary, be subpœnaed and compelled to attend and testify as aforesaid, in the manner and under the same penalties as other witnesses.

Judgment as confessed, &c. if party refuse to testify.

SECT. 85. Upon the refusal of either party, when subpœnaed by personal service of the subpœna, to appear, or appearing, upon his refusal to answer as a witness for the adverse party, as prescribed in this chapter, the justice may enter judgment against the party refusing, as if the alleged claim or demand were confessed, or the plea or defence admitted, as the case may be.

* If in an action of debt or assumpsit, commenced before a justice of the peace, the cause of action be denied by plea, the plaintiff may, on the trial, either before the justice or on appeal, examine the defendant on oath as a witness; but the defendant is not bound, unless thus under oath, to answer any questions in the cause. *Hubble* v. *Hubble*, 3 Blackf. 205.

As to costs in case of a continuance on account of the absence of the plaintiff or defendant, when the adverse party requires his testimony, see ante, page 875, sections 69, 70.

† The defendant cannot require the plaintiff in a justice's court, under the statute, to answer on oath, as to any matters not specially pleaded. *Sherry* v. *Martin*, 5 Blackf. 156.

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PART III.

Deposition of non-resident party.

SECT. 86. The deposition of either party, residing out of the county where the suit is pending, may, in such cases, be taken by his adversary, and read in evidence, in the same manner as the depositions of other witnesses.

The same rules applicable to appeals.

SECT. 87. In the trials of all appeals in such cases in the circuit court, the provisions of the five last preceding sections shall be adopted and pursued, except that if the plaintiff or defendant reside in another county, he may be subpœnaed and compelled to appear and testify as other witnesses.

Depositions.

SECT. 88. Depositions may be taken to be read in any cause pending before a justice of the peace, in like manner and subject to the same restrictions and rules of law, not repugnant to the following provisions of this article, as in cases pending in a court of record.*

Dedimus.

SECT. 89. Such depositions may be taken in pursuance of a dedimus issued by the justice of the peace before whom such cause shall be pending; and when taken shall be enclosed and directed by the officer taking the same to such justice.

Depositions to be enclosed and sent to justice.

To whom dedimus may issue.

SECT. 90. Such dedimus may issue to any justice of the peace of the same county, or of any other county in the state, or to any officer in this or in another state, authorized to take depositions to be read in a cause pending in any of the courts of this state.†

Depositions of witnesses about to leave

SECT. 91. When a witness is sick and unable to attend, or about to leave the county and will not probably return until after the trial, his deposition may be taken before such justice or any other justice of the county, and read on the trial if he shall not be able to attend, or shall not have returned to the county in time for such trial.

Dedimus not necessary in same county.

SECT. 92. Whenever the deposition of any witness resident of the same county with the justice of the peace trying a cause is necessary to be taken, the same may be taken before such justice without a dedimus.

Manner of taking depositions.

SECT. 93. Each party shall be allowed to put interrogatories to the witnesses deposing, and the depositions so taken shall be subscribed and sworn to by each witness, and certified by the officer taking them.

Depositions, when to be opened.

SECT. 94. Such deposition or depositions sealed up and transmitted to the justice before whom the suit or matter is pending, may be opened on the day of trial and read as evidence; or such depositions may be opened and examined before the day of trial by consent of parties.

Depositions of non-resident may be with or without a dedimus. Notice to be given in all cases.

SECT. 95. Either party may take the depositions of witnesses living out of the county in which the suit is pending, but within this state, with or without a dedimus; but in all cases the party taking such deposition shall first give the adverse party, his agent, or attorney, reasonable notice in writing of the time and place of taking the same.‡

* See ante, p. 720—725.

† See ante, page 720, sec. 264—sec. 280.

‡ See ante, p. 721, sec. 271, and note.

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SECT. 96. The official certificate of the justice of the peace or other authority before whom any such deposition may be taken, if within this state, shall be a sufficient authentication, and of the legal fees for taking and certifying the same, which shall be taxed thereon; but if such deposition be taken out of the state, it shall be further authenticated by the certificate and seal of a clerk of some court of record in the county where the same may have been taken, certifying that the officer before whom such depositions were taken is such officer as he is described, commissioned and qualified, by the laws of that state, unless the officer taking such depositions shall have a seal of office, in which case his certificate, attested with such official seal, shall be a sufficient authentication.

What authentication sufficient if taken within the state.

What, if without the state.

ARTICLE VII.

Of the trial of issues of fact and the incidents thereto.

SECTION

97. If no jury is demanded, trial to proceed at time appointed.
98. Trial by consent.
99. Jury to be demanded before proceeding to trial.
100. Venire.
101. When plaintiff shall pay the costs of jury.
102. When a jury of six,
103. Or any other number agreed upon.
104. Venire to be executed by a disinterested officer.
105. Manner of its service and return.
106. Right of challenge.
107. Oath of jury.
108. Evidence to be public in presence of the jury.
109. When a party may testify in his own behalf.
110. Objections to a witness, how determined.
111. Oath of witness.
112. Jury to be kept together until verdict, or discharged—oath of constable in charge of jury.

SECTION

113. Verdict to be delivered publicly.
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115. When security for costs may be required.
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118. Notice of the motion for new trial.
119. Costs of new trial, by whom to be paid.
120. Arbitrators, how chosen; their oath.
121. Summons may be issued for arbitrators—by whom served.
122. Oath of arbitrators—trial and award
123. Judgment on award.
124. To be final unless appeal in ten days.
125. On appeal, award to stand unless set aside.
126. If set aside, circuit court to render judgment.
127. Arbitrators and witnesses compelled to attend.
128. Arbitrators' fees.

SECT. 97. Whenever the parties to any suit shall appear at the time and place appointed for trial, if no jury shall have been demanded by either party, the justice shall proceed to try such issue, to hear the proofs and allegations of the parties, and to determine the same according to law and the very right of the case.

If no jury demanded, trial to proceed at the time appointed.

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PART III.

Trial by consent.

SECT. 98. When parties agree to enter, without process, before any justice of the peace, any action or suit in this chapter made cognizable before him, such justice shall enter the same in his docket, and proceed to trial, judgment, and execution in all respects in the same manner as if original process had been issued, served, and returned.*

Jury, when to be demanded.

SECT. 99. After the service of process, but before the justice shall have proceeded to an investigation of the merits of the cause by an examination of a witness, or the hearing of any other testimony, either of the parties, or the agent or attorney of either of them, may demand of the justice that the cause be tried by a jury.†

Venire.

SECT. 100. Thereupon the justice shall issue a venire, directed to any constable of his township commanding him to summon twelve good and lawful men of said township, none of whom shall be related to either party, or interested in the suit, to appear before such justice at a time and place therein to be named, to make a jury for the trial of such cause.

Plaintiff, when to pay the costs of jury.

SECT. 101. If the plaintiff shall demand a jury of twelve jurors, and such jury shall not find a verdict in the cause for at least twenty dollars in favor of the plaintiff, such plaintiff shall pay the fees of such jury, and all additional costs occasioned by such jury trial.

When jury of six persons may be summoned.

SECT. 102. At the request of either party, the justice shall issue a venire for only six jurors where the amount in controversy does not exceed twenty dollars, who shall be impannelled to try the cause.

Any other number may be agreed upon.

SECT. 103. The parties may agree upon any other number to constitute a jury.

Venire to be executed by disinterested constable.

SECT. 104. The justice issuing such venire shall deliver it, or cause it to be delivered to some constable of the township, disinterested between the parties.

Manner of service and return.

SECT. 105. The constable to whom a venire shall be delivered, shall execute the same fairly and impartially, by a personal service thereof: he shall not summon any person whom he has reason to believe is biassed or prejudiced for or against either of the parties, and shall make a list of the names of the persons summoned, certified by him and annexed to the venire, which he shall return to the justice.

Right of challenge.

SECT. 106. The parties shall have the same right of challenge to any of the jurors so summoned and appearing, peremptory or for cause, as is provided in civil cases tried in the circuit court by the regular panel of jurors.‡

Oath of jury.

SECT. 107. The justice shall administer an oath or affirmation to the jury, well and truly to try the matter in difference between ———, plaintiff, and ———, defendant, and a true verdict give according to evidence.

*See ante, page 866, sections 14, 15.

†See ante, page 875, section 67, of this chapter.

‡See ante, page 731, section 317.

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SECT. 108. After the jury shall have been duly sworn, they shall sit together and hear the proofs and allegations of the parties, which shall be delivered publicly in their presence. Proof to be delivered before the jury publicly.

SECT. 109. A party in the suit or having an interest in the judgment sought to be recovered, may be a witness to prove the death or absence beyond the reach of a subpœna of the justice of a subscribing witness to, or the loss of, any instrument of writing which shall come in question on the trial, in order to introduce other proof of the execution or contents of such instrument; but in no other case except as otherwise provided by law or by the consent of parties. When party may testify in his own behalf.

SECT. 110. If a witness, on being produced, shall be objected to as incompetent, such objection shall be tried and determined by the justice, and evidence may be given in support of or against such objection as in other cases; or the proposed witness may be examined on oath by the party objecting; and in such last case no other testimony shall be received from either party as to the competency of such witness.* Objection to a witness, how determined.

SECT. 111. Every person offered as a witness, before any testimony shall be given by him, shall be duly sworn or affirmed that the evidence which he shall give relating to the matter in difference between the plaintiff and the defendant, shall be the truth the whole truth, and nothing but the truth. Oath of witness

SECT. 112. After hearing the proofs and allegations of the parties, the jury shall be kept together in some convenient place, under the charge of a constable, until they have agreed upon their verdict, or shall be discharged by the justice; and for that purpose the justice shall administer to such constable the following oath or affirmation: "You do swear, (or affirm) that you will, to the best of your ability, keep the persons sworn as jurors on this trial together in some private and convenient place, without meat or drink, except such as shall be ordered by me; and that you will not suffer any communication, orally or otherwise, to be made to them; that you will not communicate with them yourself, orally or otherwise, unless by my order, or to ask them if they have agreed on their verdict, until they shall be discharged; and that you will not, before they render their verdict, communicate to any person the state of their deliberations or the verdict which they have agreed upon." Jury to be kept together until verdict or discharged. Oath of constable in charge of jury.

SECT. 113. When the jurors shall have agreed upon their verdict, they shall deliver it to the justice publicly, who shall enter it in his docket. Verdict to be delivered publicly.

SECT. 114. Whenever the justice shall be satisfied that a jury sworn in any cause before him cannot agree in their verdict, after having consulted upon it a reasonable time, he may discharge them and continue the cause, and may issue a new venire, if required, returnable within such time as to such justice shall appear reasonable; unless the parties, their agents or attorneys, shall agree upon a longer or shorter time, or unless they Jury not agreeing, when discharged. Venire de novo.

*See ante, page 718, sections 251 to 261 inclusive. See, also, ante, page 723, note to section 288.

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shall agree that the justice may render judgment on the evidence already before him.

Security for costs, when to be required.

SECT. 115. In all cases where the plaintiff shall not reside in the county where the suit is brought or to be brought, the justice may, before issuing process or entering the action, or at any time before trial, with or without motion, require and cause such plaintiff to give surety for costs, which may be by bond of some approved person, resident in the county, or by entry in the justice's docket, signed by the surety, or, at the election of the plaintiff, by a deposit of an amount of money with the justice sufficient for the payment of all costs incurred or to be incurred in such action.

Contempt of court, how punished.

SECT. 116. In all cases where any witness or other person shall be guilty of a contempt before any justice, while sitting or acting in his official capacity on the trial or hearing of any cause, such justice shall have the power to impose a fine therefor upon such witness or other person, not exceeding three dollars for each contempt, to which may be added, in each case, imprisonment not exceeding three hours.

New trials, when granted.

SECT. 117. It shall be lawful for the justice before whom a cause has been tried, on motion, and for cause shown by either party, to grant a new trial, at any time within four days after the entering of judgment, and set a time for the new trial, of which the opposite party shall have at least three days' previous notice. *

Notice of new trial.

Notice of the motion for a new trial.

SECT. 118. The opposite party shall also have reasonable notice of such motion for a new trial, if the same be not made on the day of the former trial, and in the presence of such party; such notices to be given by the applying party.

Costs of new trial, by whom to be paid.

SECT. 119. When a new trial is granted on the application of any party, on the ground of newly discovered testimony, he shall pay all costs which have accrued to the time of obtaining such new trial; and in all other cases such new trial may be granted with or without the payment of costs, or a part of the costs, in the discretion of the justice, according to the circumstances of the case.

Arbitrators, how chosen, and their oath.

SECT. 120. At any time before trial, the parties agreeing thereto may have their cause submitted for decision to three disinterested men, to be chosen by themselves, as arbitrators, who, if present, shall hear and determine the cause, on oath or affirmation, to be administered by the justice, to decide impartially.

Summons may be issued for arbitrators.

SECT. 121. If the arbitrators so chosen be not present, the justice if required, shall issue a summons for them to attend at a certain time and place agreed upon by the parties, or designated by the justice if they do not agree thereon, and noted in his docket; and such summons may be served by the constable, or one of the parties, or some other person, as they may agree.

Summons, by whom served.

* See ante, page 732, note to section 324.

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ARTICLE 8.

Oath of arbitrators, trial, and award.

SECT. 122. The arbitrators, when met and sworn, at the time and place appointed, shall, if the parties, or either of them, attend, proceed to hear and determine the cause, according to the allegations and proofs of the parties; and they, or a majority of them, shall make out and sign an award, and return the same to the justice by a certain day to be fixed upon, and noted on the docket at the time of choosing the arbitrators.

Judgment on award.

SECT. 123. On such award being so returned to the justice, he shall, on the day so fixed for the return thereof, enter the same on his docket, and render judgment thereon.

To be final, unless appeal in ten days.

SECT. 124. Such judgment shall be final and conclusive, as to all matters submitted to said arbitrators, unless, within ten days after the rendition thereof, an appeal to the circuit court shall be taken.

On appeal, award to stand unless set aside &c.

SECT. 125. When an appeal from such award and judgment shall be taken to the circuit court, such award shall be there affirmed with costs, unless the same be vacated by the court; and the court may affirm, modify, and correct, or vacate such award for any of the grounds or reasons specified in the forty-fourth chapter of these Revised Statutes, and may in like manner hear the proofs and allegations of such parties to vacate or sustain such award.

If set aside, circuit court to render judgment.

SECT. 126. If, in any of the cases mentioned in the last preceding section, the circuit court shall set aside the award of the arbitrators, and the judgment of the justice thereon, such court shall proceed to final trial and judgment, as in other cases of appeal.*

Arbitrators and witnesses may be compelled to attend.

SECT. 127. The arbitrators and witnesses subpœnaed in such cases shall be compelled to attend, under the same penalties to which jurors and witnesses are liable in other cases; and such justice shall swear the witnesses, and shall have power to punish for all contempts and disorderly behaviour in presence of the arbitrators, as in cases before a justice of the peace.

Arbitrator's fees.

SECT. 128. Such arbitrators shall be entitled to fifty cents each per day for their services, to be taxed by the justice with the other costs in the case; but if the award of the arbitrators, and the judgment of the justice thereon, be reversed for fraud, corruption, or undue means, the arbitrators acting therein shall receive no fees for their services as such.

ARTICLE VIII.

Of judgments, and of transcripts thereof to bind real estate.

SECTION		SECTION	
	JUDGMENTS, &c.	130.	Judgment, when in four days.
129.	Judgment, when to be forthwith rendered.	131.	In cases of confessed judgment, oath required.

* A defendant appealing from the judgment of a justice of the peace on an award, cannot have the cause tried by a jury in the circuit court, unless the award be first set aside. *Rousan* v. *Moffett*, 3 Blackf. 141.

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SECTION
132. Otherwise to be void, except as to innocent purchasers, parties, &c.
133. Judgment for costs vs. plaintiff.
134. Judgment for a balance due defendant.
135. Proceedings if defendant fail to appear.
136. Judgments by default may be opened.
137. Judgments generally to carry costs.
138. Judgment, when set-off established; execution.
139. Judgments for balance due on judgments pleaded as set-off.
140. If excess would exceed jurisdiction of justice, defendant may withhold and afterwards sue therefor.
141. When a judgment is set off, justice to give a certificate of the amount; its effect.
142. Judgment on set-off vs. executors and administrators.
143. No judgment vs. assignee in certain cases of set-off.
144. Party may reduce the sum found due to the jurisdiction of justice.
145. Suggestion of return "not found," and proceedings, vs. those served with process.
146. Note or bond may be withdrawn for suit against those not found.
147. Fines for non-attendance as witnesses or jurors, and for contempts, to be entered on docket and deemed judgment; no appeal.

TRANSCRIPT TO BIND REAL ESTATE.

148. On return of nulla bona, transcript may be had.
149. Same to be filed in clerk's office, recorded, and entered in judgment docket.
150. Within two years transcript may be so filed and recorded without execution, &c.
151. Clerks to record transcript; fee therefor.
152. Transcript to be a lien on debtor's lands.
153. Sci. fa. to obtain execution, on certificate, or return of nulla bona.
154. Cause to be docketed.
155. Suggestion that defendant has lands, &c., and proof thereof required.
156. Similar proceedings vs. decedents' lands on judgments against them.
157. Circuit courts to have jurisdiction in cases of sci. fa.
158. Sci. fa. shall not be dismissed for informality in judgment; may be amended without continuance.

Judgments, &c.

Judgment, when to be forthwith rendered.

SECT. 129. In all cases where the plaintiff shall be non-suited, discontinue, or withdraw his action, or where judgment shall be confessed; and in all cases where a verdict of a jury shall have been rendered, or the defendant shall be in actual custody at the time of hearing the cause, the justice shall forthwith render judgment and enter the same in his docket.

When in four days after trial.

SECT. 130. In all other cases, the justice shall render judgment and enter the same in his docket within four days after the cause shall have been submitted to him for his final decision.

In case of confessed judgment oath required.

SECT. 131. Whenever any person shall voluntarily confess judgment in favor of another for any sum over twenty dollars, before entering judgment on such confession, the justice of the peace shall administer an oath or affirmation to the person so confessing, that he does not confess such judgment to defraud any of his creditors, but that he is justly indebted to the person in whose favor such judgment is to be entered for the full amount for which he so confesses judgment; which oath or affirmation, together with the grounds or consideration of such indebtedness,

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shall be reduced to writing and filed with the justice as in other cases; and no appeal shall lie from a confessed judgment.*

Otherwise void, except as to parties, &c.

SECT. 132. Every judgment confessed without a compliance with the provisions of the last preceding section, shall be void as against all persons, except a purchaser in good faith of any goods or chattels, lands or tenements, under such judgment, and except as between the plaintiff, or his assigns, and the defendant, their heirs, executors, and administrators.

Judgment for costs against plaintiff.

SECT. 133. Judgment for costs shall be rendered against a plaintiff prosecuting a suit before a justice of the peace,

1. If he discontinue or withdraw his action, or be non-suited;
2. If he fail to establish his claim;
3. If it appear on the trial of the cause, by his own showing, that the title to lands or tenements is in question and disputed by the defendant.

Judgment for balance due defendant.

SECT. 134. If in any cause it shall appear on the trial that there is a balance due from the plaintiff to the defendant, the justice shall enter judgment against the plaintiff, in favor of the defendant, for the sum so appearing or found to be due, with costs.

Defendant failing to appear, justice to hear plaintiff's claim.

SECT. 135. If the defendant, having had lawful notice, shall not appear at the time and place appointed for trial, personally or by agent or attorney, and no just cause being shown for such non-appearance, the justice shall, at the request of the plaintiff, hear his proofs and allegations, determine the cause, and enter judgment therein.

Judgments by default may be set aside,

SECT. 136. If a judgment be entered against a party by default, or for not appearing and pleading, the justice shall set aside the default and open the judgment on the motion of the party in default, upon the following conditions:

Within ten days.

1. That his motion be made within ten days after such judgment has been entered;

Costs to be paid, &c.

2. That he pay or confess judgment for the costs awarded against him, and replevy such judgment;

Notice to adverse party.

3. That he notify in writing the opposite party, his agent or attorney, or cause it to be done, of the opening of such judgment, and of the time and place appointed for trial, at least six days before the time, if the party resides in the county; and if he be not a resident of the county, by leaving a written notice thereof at the office of the justice ten days before such day of trial.

Judgments to carry costs.

SECT. 137. Whenever a judgment shall be rendered by a justice of the peace against any party, it shall be with costs of suit, unless herein otherwise provided.

Judgment, when set-off established.

SECT. 138. If the amount of any set-off duly established be equal to the plaintiff's debt or demand, judgment shall be entered for the defendant with costs; if it be less than the plaintiff's debt or demand, as established, the plaintiff shall have judgment for the residue only, with costs; if it be more than the plaintiff's debt or demand, and a balance be found due to the defendant from

*See *Thatcher* v. *Coleman*, 5 Blackf. 76.

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the plaintiff in the action of one hundred dollars or under, judgment shall be rendered for the defendant for the amount thereof with costs; and an execution shall be awarded as upon a suit brought by him.

Execution.

Set-off of judgment.

SECT. 139. If the amount of any judgment, set off as herein before provided, shall exceed the amount of the debt or demand claimed by the plaintiff, the justice shall give judgment for the balance due the defendant, unless such balance shall exceed the jurisdiction of a justice of the peace.

If defendant shall not demand judgment for the excess of his claim, he may afterwards sue therefor.

SECT. 140. If the defendant's set-off shall in any case exceed the plaintiff's demand to an amount which, if found for him by the justice or jury, will be more than the justice is authorized to render judgment for, such defendant may withhold setting off such excess; and a recovery for the amount set off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount so withheld.

Justice to give certificate of amount of judgment set off; its effect.

SECT. 141. Whenever any judgment shall be set off, it shall be the duty of the justice before whom such set-off is made, to give the plaintiff a certificate thereof, under his hand and seal, which, when filed with the proper justice or clerk, shall stay all further proceedings on the judgment so set off, and shall be a satisfaction thereof; except in cases where the balance, as specified in the preceding section, shall exceed the jurisdiction of a justice of the peace, in which case so much of the amount of the judgment so set off and allowed before the said justice shall be credited on the certificate of such justice, on such judgment; and the defendant before such justice shall be entitled to have execution in the court in which such judgment was rendered for the excess of such judgment over the jurisdiction of the justice.

Judgment on set-off vs. executors and administrators.

SECT. 142. Whenever a judgment shall be rendered on a plea or statement of set-off in a suit brought by executors or administrators, it shall be against them in their representative character, and shall be evidence of a debt established to be paid in the course of administration.

No judgment against assignee in certain cases of set-off.

SECT. 143. No judgment shall be rendered against the plaintiff where the contract which is the subject of the suit shall have been assigned before the commencement of such suit, for any balance due from any other person than the plaintiff in the action.

Sum found due may be reduced to jurisdiction of justice.

SECT. 144. When an amount shall be found in favor of either party by the verdict of a jury, or upon trial before the justice, exceeding the sum for which the justice is authorized to render a judgment, such party may remit and release the excess, and take judgment for the residue.

Suggestion of return of "not found," &c.

SECT. 145. When mesne process issued by a justice of the peace shall be returned served as to one or more of the defendants, and "not found" as to another or other of the defendants therein, the justice shall, if the plaintiff, his agent, or attorney, require it, enter the return on his docket and proceed to trial and judgment against the parties served with process or appearing, as in other cases where process has been served on all the

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defendants; and the plaintiff may, at any time afterwards, proceed against those not found, or any of them.

Note or bond may be withdrawn, for suit against those not found, &c.

SECT. 146. It shall be the duty of such justice, on the request of such plaintiff, his agent, or attorney, who may be desirous of proceeding against the other defendants, to permit him to withdraw the note, agreement, or obligation on which he may have obtained such judgment, the justice retaining a copy thereof.

Fines for non-attendance as witness or juror or for contempt to be entered on docket and deemed judgments. No appeal.

SECT. 147. Whenever a justice of the peace shall impose a fine upon any person for non-attendance before him as a witness, or for refusal to testify; for non-attendance as a juror or arbitrator, or for refusal to serve as such, or for a contempt of court, such justice shall make in his docket an entry of such conviction and of the cause thereof; and the same shall be considered a judgment in all respects, and subject to all the provisions relative to judgments in criminal cases, but not subject to appeal.*

Transcript to bind real estate.

On return of nulla bona, transcript may be had.

SECT 148. Whenever an execution against any judgment debtor shall have been duly returned by a constable to the justice who issued it with a return endorsed thereon that no goods or chattels could be found sufficient to satisfy such judgment or any part thereof, such justice shall, at the request of the judgment creditor, his agent or attorney, if made within two years from the return day of such execution, make out and certify a full, true, and complete transcript of the proceedings and judgment in the cause, and of the return of such constable.†

Filed in the office of the clerk of any circuit court, recorded, etc.

SECT. 149. Such certified transcript shall be forwarded by such justice to the office of the clerk of the circuit court of any county in this state, or delivered to such judgment creditor, his agent or attorney, to be filed and recorded in any such clerk's office and entered in the docket of judgments therein.

Transcript may be so filed and recorded without execution and return, within two years.

SECT. 150. Any judgment creditor, his agent or attorney, may, at any time within two years after the rendition of any such judgment, without such execution issued and constable's return thereon, procure a certified transcript of such proceedings and judgment to be filed, and recorded, and entered on the docket of judgments in the clerk's office of any county in this state.

Clerks to record transcripts

Fee.

SECT. 151. The clerk of the circuit court of such county shall file and enter of record in the order book of such court, and enter in the judgment docket thereof, all such transcripts of judgments and proceedings before justices of the peace, for the fee of twenty-five cents.

Transcript to be a lien on debtor's lands.

SECT. 152. Every such transcript when so filed, recorded, and entered, shall constitute a lien upon, and bind, the lands and tenements of such judgment debtor, situate in the county where such transcript may be so filed, recorded, and docketed

* See post, chapter 48, article 4.

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in favor of such judgment creditor, as if such judgment had been rendered in the circuit court of such county.

Sci. fa. to obtain execution.

SECT. 153. Whenever any transcript shall have been filed and recorded, with the return of the constable that no goods or chattels could be found sufficient to satisfy such judgment or a part thereof, or whenever any judgment creditor, his agent or attorney, shall have filed in the clerk's office where any such transcript of a justice's judgment may have been filed and recorded, a certificate from the justice before whom the judgment was rendered, that an execution had been issued thereon by him to a constable of his county and duly returned by such constable, that no goods or chattels could be found sufficient to satisfy such judgment or a part thereof, and such judgment creditor, his agent or attorney, shall require such clerk so to do, such clerk shall issue a scire facias on such transcript against the judgment debtor therein, by which he shall be summoned to appear before the circuit court of the proper county, to show cause, if any he have or can, why an execution should not issue from such circuit court, on such judgment against his goods and chattels, lands and tenements in such county.*

Cause to be docketed.

SECT. 154. Upon the issuing of such scire facias, it shall be the duty of such clerk to enter the cause on the issue docket of such circuit court.

Suggestion of defendant having lands or tenements.

—To be proved on trial.

SECT. 155. Such scire facias shall, among other things, contain a suggestion that the judgment debtor has lands or tenements within the county liable to execution; and such suggestion shall be supported by satisfactory proof to the circuit court when the cause shall come to a hearing before it; and on failing to make such proof, the plaintiff shall not be entitled to judgment on his scire facias; but judgment of non-suit shall be entered thereon against him in such circuit court with costs.

Transcripts in case of decedents' estates.

SECT. 156. The provisions in this article relative to proceedings on scire facias on transcript shall extend to the lands and tenements of decedents' estates on judgments rendered against the decedents in their lifetime.

Circuit courts to have jurisdiction in cases of sci. fa.

SECT. 157. Circuit courts in the several counties in this state shall have jurisdiction of all causes of scire facias on transcripts of judgments rendered by justices of the peace, which have been filed, recorded, and docketed as aforesaid, and shall proceed and render judgments and executions thereon, according to the rules of pleading and practice at law in other cases, when not inconsistent with any of the provisions contained in this article.

Sci. fa. not to be dismissed for informality in judgment.

May be amended and no continuance allowed.

SECT. 158. No such scire facias shall be dismissed on account of any informality in the rendition or form of the judgment or the certificate of the justice of the peace, but the same may be amended; and no defendant in any scire facias to bind lands shall be entitled to a continuance in consequence of any such amendment.

* See post, chapter 48, article 4

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ARTICLE IX.

Of appeals.

SECTION
159. Any party may appeal within 30 days: stay of proceedings.
160. Bond to be given.
161. Condition thereof.
162. May be signed by surety alone.
163. Transcript, &c. to be filed in circuit court within 30 days, by justice.
164. Depositions to be filed with the appeal, and used.
165. When filed 10 days before term, to stand for trial.
166. When not filed 10 days, to stand for trial at subsequent term, unless by consent it be tried sooner.
167. Justice's fees for filing appeal papers.
168. New appeal bond may be given, if former bond be insufficient.
169. When and how surety may be released from appeal bond.
170. New surety given: or if cause tried or dismissed at same term, surety liable.
171. Amendments of causes of action and defence, when permitted.
SECTION
172. In appeals over $20, either party may demand a jury.
173. For failing to prosecute, or appealing for delay, 10 per cent. damages allowed.
174. Costs before justice taxed with costs in circuit court.
175. Costs, on appeal.
176. Same subject.
177. No appeal in suits on delivery bond without affidavit of merits.
178. When appeal may be allowed after 30 days.
179. No dismissal for failing to file transcript in time, but continuance may be had.
180. Justice to pay the costs thereby occasioned.
181. Justice being attorney not to appear as such on appeals from his own judgment.
182. Appeal being dismissed, proceedings to obtain execution.

SECT. 159. In all cases not otherwise specially provided for in this chapter, or some other law of this state, any party to the judgment of any justice of the peace may appeal therefrom to the circuit court of the county where such judgment was rendered, within thirty days after the rendition of such judgment; and from and after the time of taking such appeal, all further proceedings before the justice shall be stayed. * Appeals allowed in 30 days. Stay of proceedings.

SECT. 160. Before such appeal shall be allowed, the party appealing shall file with the proper justice, a bond, with surety to be approved of by such justice, payable to the appellee, in a sum sufficient to secure the debt or damages, and all interest and Bond to be given.

* If from the judgment of a justice of the peace against several defendants, some of them appeal to the circuit court in their own names, without joining the others, the appeal should be dismissed on motion. The appeal from such judgment should be taken in the names of all the defendants who are living, and are aggrieved by the judgment; and if any of those in whose names the appeal is taken afterwards refuse to unite with the others in its prosecution, they should be summoned and severed. *Kain* v. *Gradon*, 6 Blackf. 138.

The circuit court overruled the appellee's motion to dismiss an appeal. The motion was founded on the affidavit of a third person of his belief that the appeal bond was not executed within the time required by the statute. The record and bond showed on their face, that the bond was executed and filed in time. *Held*, that the motion was correctly overruled. *Malaby* v. *Hinkston*, 4 Blackf. 127.

If the papers in an appeal from the judgment of a justice be not filed in time, the appellee may, for that reason, have the appeal dismissed on motion; but if, without making the objection, he go to trial on the merits, the objection is waived. *Dougherty* v. *Mason*, 4 Blackf. 432. And see *Abel* v. *Burget*, 4 Blackf. 511.

The filing of the transcript, &c. in the clerk's office is sufficient evidence, prima

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costs that have accrued before the justice, and that may accrue in the circuit court.*

Condition of appeal bond.

SECT. 161. The conditions of such bond shall be,

1. That the appellant will prosecute his appeal to effect, and without unnecessary delay;

2. That he will pay and satisfy the condemnation money and costs which may be adjudged or awarded against him, on the appeal in such case in the circuit court, if judgment be there given against him.

Sufficient, if signed by the surety.

SECT. 162. In the absence of the appellant, such bond may be signed by the surety alone.

Transcript, bond, and papers to be filed within 20 days by justice.

SECT. 163. When an appeal is so taken, the justice shall make out and certify, under his hand and seal, a full, true, and complete transcript of the proceedings and judgment before him in such case, and shall cause the same, together with the appeal bond, and all the written statements of the cause of action and defence of the parties, and all papers and writings in the cause, to be filed in the office of the clerk of the circuit court to which such cause is appealed, within twenty days after the filing of the appeal bond.†

Depositions to be filed with the appeal, and used.

SECT. 164. Depositions filed with the justice of the peace in any cause, shall, if such cause be appealed, be transmitted and filed with the appeal in the circuit court, and may be read in evidence in the trial of the cause.

If filed ten days before the term, to stand for trial at such term.

SECT. 165. Whenever an appeal shall have been filed ten days before the first day of any term, such appeal shall stand for trial at such term.

Appeal not filed ten days before court, to stand for subsequent term, unless tried by consent.

SECT. 166. Should such transcript and papers in such appeal not be filed in the clerk's office ten days before the then next circuit court, the clerk shall file such transcript and papers,

facie, that the appeal had been duly prayed for and granted. *Humble* v. *Williams*, 4 Blackf. 473. See *Maxam* v. *Wood*, 4 Blackf. 297. *Boles* v. *Barnes*, 4 Blackf. 176.

After judgment, a new trial was granted. On the day fixed for a new trial, the justice set aside the order for a new trial, and affirmed his previous judgment. *Held*, that the time for taking an appeal should be reckoned from the date of the judgment last rendered. *Bowers* v. *McNutt*, 5 Blackf. 231.

* See *Shannon* v. *Spencer*, 1 Blackf. 120.

† Judgment for the plaintiff in a suit before a justice of the peace. Appeal to the circuit court by the defendant. The circuit court dismissed the suit; and on a writ of error, the judgment of dismissal was affirmed. The reason given for the affirmance was, that it did not appear from the transcript of the record, that the plaintiff below had filed any statement of his demand, or any note or other writing relied on as the cause of action. *Bell* v. *Trotter*, 4 Blackf. 12.

In an appeal from the judgment of a justice of the peace to the circuit court, the cause of action filed with the justice need not be copied or referred to in the justice's transcript. *White* v. *Fortune*, 6 Blackf. 116.

Any statement of the cause of action in the transcript, however short and informal it may be, will answer the purpose, provided enough be shown to bar another action for the same demand. *Denby* v. *Hart*, 4 Blackf. 13.

The transcript of a justices' judgment, as shown on the appeal in the circuit court, commenced as follows: "*Jesse Davar, assignee of Thomas Grimes*, v. *William Moberly*. Debt on note for 24 dollars; interest 5 dollars and 55 cents." *Held*, that the transcript showed with sufficient certainty what was the cause of action. *Moberly* v. *Davar*, 5 Blackf. 409.

In the case of an appeal, the justice is bound to file his transcript within the time prescribed by statute, though his fees have not been paid or tendered. *Ingram* v. *Plasket*, 3 Blackf. 450.

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but shall not docket the cause for that term, but for the term next thereafter, unless the parties agree to try the cause at such first term.

Justice's fees for filing appeal papers.

SECT. 167. All justices of the peace, other than those living within the limits of a county seat, shall be allowed six cents per mile for travelling to the clerk's office to file a transcript or appeal papers therein, to be collected as their other fees in the case are collected.

New appeal bond may be given, if former bond insufficient.

SECT. 168. No appeal shall be dismissed by the circuit court on account of the informality or insufficiency of such appeal bond, if the appellant do, on or before the calling of the cause, file a good and sufficient bond, with surety to the acceptance of the court. *

Surety may be released from appeal bond.

SECT. 169. If the surety or sureties in an appeal bond desire to be released therefrom, on application to the circuit court, after having given the appellant at least three days previous notice thereof, such court shall cause an order to be entered, discharging such surety or sureties from all further liability therein, except as is provided in the next section.

New surety must be given, or cause tried or dismissed.

SECT. 170. In such case, the appellant shall give other surety to the acceptance of the court; and on failure so to do, the cause shall not be continued, but it shall be tried at that term, or if not, it shall be dismissed at the appellant's cost, in either of which cases, the surety of such appellant shall be liable.

Liability of such surety.

Amendments of causes of action and defence, when permitted.

SECT. 171. The circuit court may permit the plaintiff to amend his cause of action, or to file, at any time before the cause is called for trial, an additional cause or causes of action, without changing the form of action; and also the defendant may be permitted to amend his defence, or to make one or more statements of his defence, where none has been filed, or to file one or more additional statements of defence; either party amending, on the payment of such costs as the court may direct.

Costs.

Appeals to be tried by the court, unless in amounts over $20, and a jury is demanded.

SECT. 172. The circuit court shall hear and determine all such cases brought before it in a summary way, without a jury, unless when the amount in controversy shall exceed the sum of twenty dollars, in which case either party may require the cause to be tried by a jury.

Appellant failing to prosecute, or appealing for delay, to pay damages.

SECT. 173. If any appellant shall fail to appear and prosecute his appeal in the circuit court, or if such appeal shall appear to have been taken for delay, such court may, on motion of the appellee, affirm the judgment of the justice in favor of the appellee, with ten per centum damages thereon and costs, and give judgment therefor; or, on like motion of the appellee, proceed to hear and determine the case as in other cases of appeal.

Costs before justice to be taxed in circuit court.

SECT. 174. The costs taxed by the justice, and set forth in his transcript, shall be taxed with the costs incurred in the circuit court on the appeal.

* See *McCall* v. *Trevor*, 4 Blackf. 496.

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PART III.

Costs, for whom awarded on appeals.

SECT. 175. Costs shall be allowed to the prevailing party in judgments rendered on appeal in all cases of trial, with the following exceptions and limitations:

1. If the defendant against whom judgment is rendered before the justice appeal, and judgment thereon be rendered in his favor, or the amount recovered before the justice be reduced five dollars or more, costs shall be awarded to the appellant.

2. If a defendant in whose favor a judgment is rendered before the justice for any balance due him from the plaintiff, appeal, and he shall not recover at least five dollars more than the amount recovered before the justice, costs shall be awarded to the appellee.

3. If the plaintiff in whose favor judgment has been rendered before the justice, appeal, and he shall not recover at least five dollars more than the amount recovered before the justice, costs shall be awarded to the appellee.

Same subject.

SECT. 176. In all other cases the party recovering any sum shall recover costs.

No appeal in suits on delivery bonds unless on affidavit of merits.

SECT. 177. No appeal shall be allowed to defendants in actions on delivery bonds, from justices to the circuit court, unless upon affidavit of merits in the appeal, and that the same is not sought to be taken for delay merely, but for justice.

Appeal when allowed after thirty days.

SECT. 178. The circuit court may, on motion and affidavit of the party, his agent or attorney, authorize the taking of an appeal, and direct how the same may be done, from the judgment of a justice, after the expiration of thirty days from the rendition of such judgment, if it shall appear from such affidavit or other evidence that such party wishing the appeal was prevented from taking the same within said thirty days by unavoidable circumstances, or by the improper conduct of the justice rendering the judgment or having the same in his possession, or of the appellee, and that he has merits in such appeal.

No dismissal for failure to file transcript in time, but continuance may be had.

SECT. 179. No appeal from the decision of a justice of the peace shall be dismissed because such justice shall have failed to file the transcript in the proper circuit court within the time prescribed by law; but the court in such case, if the rights of either party require it, may continue the cause to the next term.

Justice liable for costs thereby occasioned.

SECT. 180. The costs occasioned to each party by such continuance shall be taxed separately from the other costs, and may be recovered in an action of debt of such justice of the peace in the name of the party against whom such costs shall have been taxed.

Justice, being attorney, not to appear on appeals from his own docket.

SECT. 181. No attorney at law, holding a commission as a justice of the peace and acting as such, shall be permitted to appear as attorney in the circuit court in any cause appealed from his decision.

When appeal is dismissed, proceedings to obtain execution.

SECT. 182. When any appeal is dismissed in the circuit court, the clerk of such court, at the request of either party, his agent or attorney, shall certify to the justice from whose judgment such appeal was taken, the order or judgment of the

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court dismissing such appeal, and upon such certificate being filed with such justice, the party in whose favor the judgment before such justice was rendered, may have execution and other proceedings thereon in like manner as if such appeal had never been taken. ARTICLE 10.

ARTICLE X.

Of the removal of causes to the circuit court by writ of certiorari.

SECTION
183. Certiorari, when allowed.
184. Bond to be filed with the clerk of the circuit court.
185. Writ must be applied for within thirty days after judgment; if issued afterwards to be disregarded.
186. But circuit court may allow such writ within five years, on cause shown.
187. It shall stay and supersede execution, &c.
188. Execution not to issue, and constable not to execute after certiorari.
189. Justice shall certify his proceedings to circuit court; fees.
190. Justice may be compelled to amend his return, &c.

SECTION
191. Notice to defendant in certiorari.
192. Notice, when to be given.
193. Cause, when to stand for hearing.
194. Technical defects, &c. shall not be regarded.
195. Same subject.
196. Reversal of cause may be in whole or in part; judgment and execution.
197. On affirmance, judgment for costs, and cause remanded, or judgment rendered by circuit court.
198. If judgment reversed, cause shall be retained and tried.
199. Proceedings in case of reversal or affirmance in part.
200. Writ, how issued.

SECT. 183. In all cases of judgment rendered before a justice of the peace, either party thinking himself aggrieved by any such judgment, may remove the same by writ of certiorari to the circuit court of the county where the judgment was rendered.* Certiorari, when allowed.

*The following form for a writ, and the return thereto, is here appended:

State of Indiana, ——— county, ss.:

The state of Indiana to *A B*, esquire, one of the justices of the peace for the said county of ———, greeting:

Whereas, *C D*, lately in a cause pending before you, impleaded *E F* in an action of debt, [or as the form of action is] and such proceedings have been thereupon had in the said cause, that judgment has been therein given by you against the said *A B*, as it is said; and the ——— circuit court for our said county being willing for certain causes that the transcript of your proceedings and judgment should be certified by you to said court: You are hereby commanded that you distinctly and plainly, under your hand and seal, deliver a certified transcript of said proceedings and judgment, as fully as the same remain before you, with the process, pleadings, and all other things touching the same, together with this writ, in the office of the clerk of said court on or before the return day of this writ, that said circuit court may further cause to be done thereupon what of right shall be fit to be done. Witness, &c. [as in the case of other writs.]

The writ is executed by the justice making out a copy of his proceedings, &c. in the cause, annexing thereto his certificate under his hand and seal, and delivering them to the proper clerk to be filed; see post, section 189, of this chapter; and returning therewith the writ.

The return endorsed on the writ may be in the following form:

I have executed this writ, as will appear by the transcript of the proceedings and judgment, with the process, pleadings, and all other things touching the same, returned with this writ. *A B*, justice of the peace.

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PART III.

Bond to be given to clerk of circuit court.

SECT. 184. The party intending to apply for such certiorari, or some other person in his behalf, shall file in the office of the clerk of the circuit court a bond to the adverse party, with sufficient penalty and surety, conditioned for the payment of all costs which may accrue on such writ of certiorari, if such costs are adjudged by the court to be paid by him, and also the payment of the amount of any judgment that may be rendered against such plaintiff in certiorari in such circuit court.

Must be applied for within thirty days after judgment.

If after, justice to disregard it.

SECT. 185. Such writ of certiorari shall not be allowed or issued in the vacation of the court, after the expiration of thirty days from the day on which the judgment sought to be reversed was rendered; and if any such writ shall issue in violation of the provisions of this section, it shall be the duty of the justice to whom it may be directed to disregard the same.

May be allowed within five years by circuit court on cause shown.

SECT. 186. But writs of certiorari may be allowed in term time by the circuit court on cause shown, at any time within five years, if it shall be shown to the court by affidavit or otherwise that such judgment is not satisfied.

To stay or supersede execution.

SECT. 187. The writ of certiorari allowed under the provisions of this article, shall in all cases operate to stay execution, or if an execution have issued shall operate as a supersedeas of such execution, if a bond, as provided in the second section of this article shall have been filed as therein required.

Justice not to issue execution after.

SECT. 188. If the writ of certiorari be served on the justice before the issuing of execution, no execution shall issue; if execution shall have been issued, the plaintiff shall cause a certificate from the clerk of the circuit court, of the issuing of such writ, to be delivered to the officer in whose hands such execution may be; and from the time such certificate is delivered, such execution shall be superseded.

Constable not to execute after certificate thereof.

Justice to certify proceedings to circuit court; his fees.

SECT. 189. The justice to whom such writ is directed, on or before the return day thereof, shall make return thereto, certifying under his hand and seal all the matters and things required to be certified by such writ, to such circuit court, and shall file the same in the clerk's office; for which he shall be allowed the same fees as in cases of appeal from his judgment to the circuit court.*

Court may compel justice to amend his return.

SECT. 190. The circuit court shall have power to compel such justice to make or amend such return by rule, attachment, or mandamus, as the case may require.

Notice to defendant in certiorari.

SECT. 191. As soon as such writ of certiorari shall be issued, it shall be the duty of the plaintiff in certiorari to cause notice thereof to be served on the defendant in such writ, his agent, or attorney, by reading or by a copy of the notice left at his usual place of residence; but if such party be not a resident of the county, and have no agent or attorney therein, such notice shall be given by setting up advertisements in three of the most public places in the township in which such judgment was rendered, and a like advertisement in the office of the clerk of such county, and continuing the same for two weeks.

*See ante, page 891, section 167.

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ARTICLE 10.

Notice, when to be given.

SECT. 192. The notice required by the preceding section shall be given at least ten days before the first day of the term of the court to which such writ is returnable; but if a sufficient number of days do not intervene between the date of the writ and the return day thereof, the court may continue the cause and make such order respecting the notice as shall be necessary and right.

Cause, when to stand for hearing.

SECT. 193. At the first term after such notice shall have been given ten days previous to the first day of such term, the cause may be brought to argument before the court, on the motion of either party, without any assignment or joinder in error.

Technical defects, etc., not to be regarded.

SECT. 194. The court shall proceed and give judgment in the cause as the right of the matter may appear, without regarding technical or formal omissions or defects in the proceedings before the justice which did not affect the merits.*

Same subject.

SECT. 195. No judgment shall be reversed merely for the omission or misrecital of any oath; nor on account of any fees being taxed improperly by any justice, except so far as relates to such fees.

Reversal may be in whole or in part, and, judgment rendered execution may issue.

SECT. 196. The court may affirm or reverse the judgment of the justice of the peace in whole or in part, and may render judgment therein as hereinafter provided, and execution may issue thereon as upon other judgments in such court.

Judgment being affirmed, cause may be remanded;

SECT. 197. If the judgment of the justice be affirmed, the court shall render judgment against the plaintiff for the costs upon such writ, and order their clerk to certify their decision in the premises to the justice, that such proceedings may be had by him on the judgment thus affirmed as if such writ of certiorari had never been issued; or such court may render judgment for the amount of the judgment before the justice and the costs taxed by him, and award execution therefor.

Or judgment rendered.

Judgment reversed, cause shall be retain'd and tried, and judgment for costs.

SECT. 198. If, on certiorari, the judgment of the justice of the peace be reversed or set aside, the court shall render judgment of reversal and also judgment for the costs that have accrued up to that time, in the circuit court, in favor of the plaintiff in the certiorari, and award execution therefor; but the cause shall be retained by the court for trial and final judgment

* This article was added in the house of representatives, and follows substantially the statute of Ohio on the same subject. The following decisions of the supreme court of Ohio are here appended:

"The same attention to regularity and form is not required of justices which has been considered necessary in courts of record. The fact is, that this court has always taken great latitude of discretion in deciding on proceedings of inferior tribunals; and we have done so from a conviction that a different course would not only destroy their usefulness, but render them, in a great degree, deceptive and mischievous." *Harding* v. *Trustees of New Haven Tp.*, 3 Ohio R. 227.

On a writ of certiorari, the plaintiff may assign for error matter of fact not apparent on the record, and put the defendant to take an issue either on the fact or the law. *Hartshorn* v. *Wilson*, 2 Ohio R. 28.

A judgment in proceedings by attachment before a justice of the peace may be set aside on certiorari, upon assignment of the fact and proof that the defendant was not a non-resident when the attachment issued, Ibid.

There must be a final judgment before the writ can be issued. *Ewing* v. *Hollister*, 7 Ohio R. (part 2) 138.—*Walpole* v. *Ink*, 9 Ohio R. 142.

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PART III.

as in cases appealed to such court from the judgment of the justice of the peace.

Proceedings on reversal or affirmation in part.

SECT. 199. If the judgment of the justice of the peace be reversed or affirmed in part, the costs shall be taxed as the court may direct; and in such case the court may give such instructions to the justice, or pronounce such judgment in the premises as shall be just and right.

Writ, how issued.

SECT. 200. The writ of certiorari, whether issued in term or in vacation, shall be issued by the clerk of the circuit court, tested in his name, and sealed with the seal of the court, and be returnable to the first day of the term next after the date of such writ.

ARTICLE XI.

Of the action of replevin.

SECTION
201. When replevin lies; limited to $50.
202. Shall not lie in favor of execution defendants, nor in proceedings for collection of taxes.
203. Plaintiff must have right of possession.
204. Affidavit required—its contents.
205. Form of writ.
206. How executed.
207. Who may be made defendant — defendants may sever in pleading.
208. When plaintiff shall give bond conditioned to prosecute. make return, pay damages, etc., property shall be delivered to him.
209. If bond not given, property to be restored to defendant.

SECTION
210. Constable shall summon defendant. and also the person in whose possession property is found and make return.
211. Justice shall proceed to judgment, etc.
212. Damages when to be found for pl'ff.
213. Action on plaintiff's bond.
214. Action to be regulated by rules of circuit court.
215. Suit to procoed although property be not found or delivered.
216. And plaintiff may recover value thereof.

When replevin lies.

Limited to $50.

SECT. 201. An action of replevin shall lie for wrongfully taking and unlawfully detaining, or for unlawfully detaining only, the personal goods and chattels of another person, of not more than fifty dollars in value.

Not in favor of execution defendants;

Nor in case of taxes, etc.

SECT. 202. No execution defendant shall have his action of replevin before a justice of the peace against any officer, to replevy property taken by virtue of an execution, except property exempt from execution; nor in the collection of any tax, assessment, or fine, in pursance of any statute of this state.

Plaintiff to have right of possession.

SECT. 203. Nor shall the action of replevin lie for any person who has not a legal right to the immediate possession of the goods and chattels sought to be taken, at the time of issuing the writ.*

See *Walpole* v. *Smith*, 4 Blackf. 304.

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ARTICLE 11.

Affidavit required.

SECT. 204. Before a writ of replevin shall issue, the plaintiff therein, his agent or attorney, shall make an affidavit before some officer authorized to administer oaths, that the defendant has wrongfully taken and does unlawfully detain, or does unlawfully detain, (as the case may be,) from the deponent, his personal goods and chattels, (naming and describing them as particularly as may be, and also the value of each and every article,) which he seeks to replevy.*

Form of writ.

SECT. 205. When such affidavit is made and filed with the justice of the peace, he shall issue forthwith a writ of replevin to any constable of his township, commanding him, if the plaintiff will satisfy and make him safe by good and safe pledges, that he seize and take into his custody, wherever they may be found in his county, (the goods and chattels mentioned and described in the affidavit,) and deliver them to the said plaintiff, and summon (the defendant) and any other person in whose possession the said goods and chattels may be found, if required so to do by the plaintiff, to appear at a time and place to be named in said writ, to answer the said plaintiff of and concerning the wrongful taking and unlawful detention, or the unlawful detention (as the case may be) of the said goods and chattels.

How executed.

SECT. 206. Such writ shall be served by the constable taking into his custody said goods and chattels, or such of them as can be found, and by reading such writ to the defendant, and giving him a copy thereof if required, or by leaving a copy thereof at his usual place of residence, if he shall be absent, as in cases of summons in actions of debt.

Who may be made defendant.

Defendants may sever in pleading.

SECT. 207. If the goods and chattels sought to be replevied be found in the possession of any person in the county, other than the defendant mentioned in the writ, such other person being summoned, may be made a co-defendant in all subsequent proceedings in the action; but such defendants may sever in their pleadings thereto.

Plaintiff to give bond, &c.

SECT. 208. If the plaintiff in such writ of replevin, his agent or attorney, make, execute, and deliver to said constable, within twenty-four hours after he shall have taken the goods and chattels mentioned in said writ of replevin, his penal bond, payable to the defendant, in double the amount of the value of the goods and chattels so taken, with sufficient surety, to be approved of by said constable, conditioned as follows:

* If in replevin before a justice, the defendant appear, plead in bar, and go to trial, without objecting to the affidavit, he cannot afterwards object to it as an affidavit. But the affidavit in such case may answer for the statement of demand; and in that character it may be objected to or amended as other statements of demand. *Perkins* v. *Smith*, 4 Blackf. 299.

On an appeal in replevin the plaintiff, as in other cases, may have leave to amend his statement of demand filed before the justice, by inserting the value of the property. Ibid.

If, in an action of replevin in a justice's court, the statement of demand filed before the writ issued, state the value of the property, the omission of the amount of such value in the affidavit is not material. *Mooney* v. *Myers*, 5 Blackf. 331.

If, in an action of replevin commenced before a justice of the peace, the affidavit filed be such as the statute on the subject requires, no other statement of the demand is necessary. *Andre* v. *Johnson*, 6 Blackf. 188.

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PART III.

1. That the plaintiff will well and truly, without delay, prosecute such writ to effect;

2. That he will return such goods and chattels as may be taken by the constable to the defendant, or such person as he may have taken them from, in as good condition as he receives them, if, on the final hearing of the cause, return shall be awarded;

3. That he will also pay such damages as may be awarded to the defendant, or such person as he may have taken the property from, if he succeed in defending such action;

Said constable shall deliver the goods and chattels taken by him by virtue of said writ, to the plaintiff therein, his agent or attorney.

Bond not given, constable to restore property.

SECT. 209. If the plaintiff in replevin, his agent or attorney, do not, within the time in the last above section limited, deliver to such constable such bond as is in said section provided, such constable shall, after the expiration of that time, forthwith restore such goods and chattels to the person from whom they have been taken by him, taking a receipt therefor.

Constable to summon defendant and make return.

SECT. 210. The constable shall summon the defendant, and, if required so to do by the plaintiff, the person from whom he may have taken such goods and chattels, to appear and answer, according to the command of said writ of replevin, and make return of the same, with the time and manner of service, to the justice who issued the same, together with the bond which he shall have taken.

Justice to proceed to judgment.

SECT. 211. The justice shall then proceed to a final hearing and judgment in the cause, as in other cases.

Damages to be found for plaintiff.

SECT. 212. If the plaintiff succeed in his action, the justice or jury trying the same shall give the plaintiff such damages as may be deemed just and reasonable, for the wrongful taking and detaining, or the wrongful detention only, as the case may be, of the property replevied.

Action on plaintiff's bond.

SECT. 213. If the plaintiff fail in any of the conditions of his bond to the defendant, or if the defendant succeed in his defence to such action, the defendant may maintain a suit thereon, after a forfeiture has been incurred.

Rules to regulate such actions.

SECT. 214. Suits on such bonds, given in actions of replevin before a justice of the peace, shall be governed by the provisions of law regulating such suits in a circuit court, so far as the same are applicable, and not repugnant to the provisions of this chapter.*

Suit to proceed although property is not found or delivered to plaintiff.

SECT. 215. If the goods and chattels specified in any writ of replevin cannot be found or replevied, or have not been delivered to the plaintiff, by reason of his failing to give bond as above required, the defendant shall nevertheless be summoned by virtue of such writ, to appear and answer to the plaintiff's action for the recovery of the value of such property.

*See ante, page 704, sections 187, 188.

For decisions of the supreme court in actions of replevin, &c., see notes to article 7, chapter 40, ante, page 697.

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SECT. 216. In the cases specified in the last preceding section, such cause shall be heard and determined before such justice as other actions, and the plaintiff, if he recover, shall be entitled to judgment and execution for the value of such property, or of his interest therein and costs of suit.

ARTICLE 12.

And plaintiff may recover value of goods, &c.

ARTICLE XII.

Of executions and sales thereon; of delivery bonds, and of process against the body of the execution debtor.

SECTION

EXECUTION; LIEN; RETURN; STAY OF EXECUTION; NOTICE OF SALE; APPRAISEMENT; DELIVERY BONDS.

217. When party appears, execution to issue after four days.
218. Otherwise not until after ten days.
219. On confessed judgments execution may go forthwith.
220. Execution, to whom directed, and its contents.
221. Shall be a lien from delivery on personal property.
222. Such lien to be divested by a prior levy on a subsequent execution.
223. Execution may be had forthwith on oath made.
224. Executions returnable in one hundred and twenty days; only three to be issued in a year.
225. But one offer to sell on each unless at creditor's costs.
226. On appeal taken, execution to be recalled.
227. Stay of execution, when and how obtained.
228. Justice to note on execution who is principal and who surety; property of principal to be first executed.
229. No stay of execution if surety object, without indemnification.
230. Notice of a sale on execution.
231. Time and place of sale.
232. Property must sell for two thirds.
233. Appraisers, how chosen, and their duty.
234. Same.
235. Same.
236. May be fined for not serving.
237. Appraisers' oath.

SECTION

238. Appraisement to be returned and filed with execution.
239. Appraisers' fees.
240. Delivery bond.
241. Constable liable for inadequacy of security.
242. Proceedings on failure to deliver property.
243. Creditor may proceed on his judgment or on his bond.
244. After failure to deliver, constable may levy on same or other property.
245. No second delivery bond.
246. Recovery on delivery bond to be for what.
247. Property not being sold for two thirds a special endorsement to be returned with execution;
248. And the property restored to defendant on his giving bond.
249. Such bond, to whom payable and to whom to be returned.
250. Lien to continue on the property.
251. When there shall be a new appraisement or other property seized.
252. Condition of bond, when considered broken.
253. Suit thereon — no stay or appraisement except for surety.
254. Debtor may sell the property levied on; proceeds to be applied to execution.

REMEDY OF BAIL, ETC.

255. Bail may have execution issued vs. principal, and how.
256. Same.
257. On giving new surety and paying costs, defendant may stay execution.

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PART III.

SECTION
258. Bail paying debt, judgment to stand for his use.
259. He may have and file a transcript.
260. Constable is to appraise and sell property as soon as possible.

CAPIAS AD SATISFACIENDUM.

261. No ca. sa. except, &c.
262. When affidavit is made; contents thereof.
263. Affidavit need not specify particulars; but same must be found by court or jury.
264. On such affidavit summons to issue.
265. Returnable in ten days.
266. Of the trial thereon.
267. Issue made and trial by justice or jury.
268. Ca. sa. to issue if debtor will not surrender property on judgment against him.
269. Capias to issue on affidavit that debtor is about to leave the state.
270. Debtor may give bail, and such bail may surrender.

SECTION
271. Condition of such recognizance of bail.
272. Constable may take same.
273. Sci. fa. vs. bail; his liability limited.

SATISFACTION OF EXECUTION, ETC.; NO STAY IN CERTAIN CASES.

274. Constable to pay over moneys without delay.
275. Execution satisfied to be forthwith returned with the money.
276. Overplus of sales to be returned to debtor.
277. Proceedings vs. constable for failing to return execution, making a false return, or failing to pay.
278. What may be recovered from constable and his sureties.
279. On certain judgments no stay or appraisement.
280. Applicable to principals only.
281. The two preceding sections, when in force.

Execution; lien; return; stay of execution; notice of sale; appraisement; delivery bond.

Parties having appeared at trial, execution to issue after four days.

SECT. 217. Upon any judgment being rendered by a justice of the peace, he shall issue execution, if the party against whom the judgment is rendered, his agent, or attorney, appeared at the trial, after the expiration of four days from the entry of such judgment, unless otherwise hereinafter directed.

Otherwise in ten days.

SECT. 218. If a judgment be entered against a party on his default for not appearing and pleading, execution shall be issued after the expiration of ten days from the entry of such judgment, unless otherwise hereinafter directed.

On confessed judgments execution forthwith.

SECT. 219. In cases of judgments entered on confession, execution shall issue forthwith, unless otherwise agreed upon in the terms of confession.

To whom directed, and its contents.

SECT. 220. The execution shall be directed to any constable within the same county, and after reciting the rendition of the judgment and the date thereof, and the amount of costs taxed thereon, shall command him to make the debt or damages, interest, and costs and accruing costs, of the goods and chattels of the person against whom it shall be issued, (excepting such as are by law exempted from execution,) by levy and sale thereof, and to bring the money at a certain time and place, therein to be mentioned, before such justice, to be rendered to the party who recovered the same.

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ARTICLE 12.

SECT. 221. Executions issued by a justice shall operate as a lien on the personal property of the judgment debtor named in the execution, in the county where it shall be issued, from the time it shall be delivered to a constable for service, which time such constable shall endorse thereon.* A lien from delivery. Time to be endorsed.

SECT. 222. Such lien, however, shall be divested in favor of any other execution in the hands of any other constable or officer, without regard to the time of delivery, if such other constable or officer, by virtue of such other execution, shall have made the first levy on such goods and chattels, and proceeded with due diligence in perfecting execution thereof.* Lien divested by a prior levy on a subsequent execution.

SECT. 223. If the party obtaining a judgment shall make it appear by his own oath, or by other competent proof, to the satisfaction of the justice, that he will be in danger of losing the debt or damages recovered by him unless execution issue sooner than is prescribed by the two first sections of this article, such justice shall issue such execution immediately, unless the same be stayed as hereinafter provided. When execution may be had forthwith.

SECT. 224. All executions issuing from a justice of the peace on judgments, shall be made returnable at the expiration of one hundred and twenty days, and not sooner, so that not more than three executions shall be issued by a justice on one judgment in a period of twelve months. Returnable, &c. in 120 days. Only 3 in a year.

SECT. 225. There shall not be more than one offer to sell under any one and the same execution, unless the execution creditor, his agent or attorney, shall direct such subsequent offer at his own costs. Only one offer to sell, unless at plaintiff's costs.

SECT. 226. Whenever an appeal shall have been duly taken upon any judgment, upon which an execution has issued, the justice shall recal such execution forthwith. Execution to be recalled on appeal taken.

SECT. 227. The party against whom a judgment is rendered before a justice of the peace, except where a stay of execution is prohibited by law, shall have a stay of execution by entering recognizance of replevin bail for such stay on the docket of the justice, in the same manner as in cases of recognizance of replevin bail entered with the clerk of the circuit court; and such recognizance of replevin bail shall have the force and effect of a judgment duly confessed, as against the goods and chattels, and body of such replevin bail; and at the expiration of such stay, execution on the judgment thus stayed shall issue jointly against the principal and replevin bail, as in the case of replevied judgments in the circuit court; and if at the time of entering such replevin bail, an execution shall have been issued, the same shall be returned, without further service or execution thereof, by the officer in whose hands the same may be, with the reason for such return endorsed thereon by such officer.† Stay of execution, when and how obtained.

SECT. 228. When an execution shall be issued by a justice of the peace, on any judgment against a judgment debtor, and Justice to designate between principal

* See ante, page 743, section 379.

† See ante, page 736, section 346.

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and surety on execution: constable to execute principal's property first.

his surety or replevin bail, the justice issuing the same shall make an endorsement thereon, designating which of the defendants is the principal and which the surety or replevin bail; and the constable executing such writ, shall first sell so much of the goods and chattels of the principal defendant named in such execution as he may be able to find, before he shall sell any of the goods and chattels of such surety or replevin bail, unless he shall be otherwise directed by such surety or replevin bail.

No stay on judgments vs. surety and principal, without surety consent or be indemnified.

SECT. 229. When judgment shall be entered against several persons upon an instrument in writing, any of the signers of which shall have executed the same as surety for the others, or any of them, and that fact being proved to the justice rendering the judgment, no stay of execution shall be had thereon, if such surety object thereto, unless the principal defendant shall indemnify the said surety to the satisfaction of said justice.

Notice of sale on execution.

SECT. 230. All property to be sold on execution by a constable, shall be by him advertised for sale at public vendue, at three of the most public places in the township where the same may be found and seized, at least ten days prior to the day of sale.

Time and place.

SECT. 231. Such sale shall be held between the hours of ten o'clock in the forenoon, and five o'clock in the afternoon of such day, at the dwelling house of such debtor, or on the premises where found and seized, or at one of the most public places in the township where found and seized, and shall be as publicly made as the case will permit.

Must bring two-thirds.

SECT. 232. No property of any description shall be sold on execution to be issued by a justice of the peace for less than two-thirds of its appraised value at the time of such sale, after deducting all incumbrances thereon.

Appraisers, how chosen, and their duty.

SECT. 233. For the purpose of such appraisement the defendant shall choose one disinterested householder of the neighborhood where such levy was made, and the plaintiff, his agent or attorney, shall choose another, or in case of the absence of such plaintiff, or of his failure so to choose, the constable shall choose for him; and such appraisers shall appraise the property thus levied, and in case of their disagreement, they shall choose a like disinterested householder, with whose assistance they shall proceed to complete such valuation.

Same.

SECT. 234. In case such defendant shall fail to choose an appraiser within three days after notice of such levy, such constable shall choose an appraiser for him, who shall proceed in all respects as if he had been chosen by such defendant.

Same.

SECT. 235. In case any of said appraisers shall fail to complete such valuation, such plaintiff, his agent or attorney, or constable in their absence, or the defendant, or the appraisers, if two of them remain who were first chosen, as the case may be, shall choose an appraiser in the place of the one before chosen by him or them, and so refusing to act; or if such execution defendant shall fail to choose such appraiser within two days after notice of such failure of the appraiser chosen by him

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to act, such constable shall choose an appraiser for him, who shall proceed in all respects as if he had been chosen by said defendant.

Appraiser chosen, may be fined for not serving.

SECT. 236. Every householder chosen as an appraiser as aforesaid, who shall refuse to act as such, except in case of sickness of himself or family, or unavoidable accident preventing him, upon complaint and conviction thereof before a justice of the peace, shall be fined fifty cents.

Form of appraiser's oath.

SECT. 237. Such valuation shall be sworn to by the appraisers, and the constable making the levy shall have authority to administer the oath, which shall be annexed to a schedule of the property appraised, and shall be in substance as follows: "We the undersigned do solemnly swear (or affirm) that the goods and chattels mentioned above are, to the best of our knowledge, of the value annexed and set down thereto by us, the same being a fair price and just valuation thereof at this time."

Appraisement to be returned and filed with execution.

SECT. 238. Such appraisement, when so made and executed, shall be delivered to the constable making such levy, to be by him returned and filed with the execution under which such levy was made.

Appraiser's fees.

SECT. 239. Such appraisers shall severally be entitled to receive twenty-five cents per day for their services.

Delivery bond.

SECT. 240. It shall be lawful for any constable, having levied upon any goods or chattels by virtue of an execution in his hands, to take a bond with sufficient surety from the judgment debtor, if tendered, for the delivery of such property after the appraisement thereof, at such time and place as may be appointed for the sale thereof, which shall be mentioned in such bond, in as good condition as the same may be in at the date of the bond; such bond to be made payable to the judgment creditor, and in double the amount of such valuation.

Constable liable for inadequacy of surety.

SECT. 241. The constable taking the bond shall be held responsible for the sufficiency of the bond and the sureties, at the time of taking it.

Proceedings on failure to deliver property.

SECT. 242. Whenever there shall be a failure of delivery, agreeably to the condition of such bond, the constable shall return the bond, with the execution, to the justice, mentioning in his return the facts of the case, after which time, the bond shall be at the disposal of the obligee therein.

Obligee may proceed on his judgment or bond.

SECT. 243. The obligee in a delivery bond may have his remedy on the original judgment by execution or otherwise, in the same manner as if such bond had not been taken, and may afterwards resort to such bond, if necessary, or he may prosecute such bond in the first instance.

Constable may levy on the same or any other property.

SECT. 244. Whenever hereafter any execution defendant shall execute to any constable a delivery bond for any personal property, upon which such constable may have levied by virtue of an execution in his hands, and shall fail or refuse to deliver such property at the time and place specified in said bond, according to the condition thereof, such constable shall have full

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power and authority again to levy upon the same or any other property.

No second delivery bond.

SECT. 245. Upon so levying again, he shall take such property into his actual possession, and retain the same until the day of sale, and shall not receive from such execution defendant a second delivery bond.

Recovery on bond to be value of property to the extent of the execution and ten per cent. damages.

SECT. 246. Such delivery bond shall be valid in law, and an action may be maintained thereon whenever the conditions thereof may have been violated; and on recovery being had thereon, the amount due on the execution shall be assessed in favor of the plaintiff, if the property so taken be of sufficient value to satisfy the same, and if not, then the value of the property so taken; and in all such cases ten per centum damages shall be assessed on the amount so recovered.

Property not sold for two thirds, special endorsement to be returned with execution.

SECT. 247. Whenever any constable shall expose any goods or chattels to sale on any execution in his hands, and the same cannot be sold for two thirds of the appraised value thereof as aforesaid, it shall be the duty of such constable to return such execution to the justice who issued it, with a special endorsement to that effect.

Property to be returned to defendant if he will give bond for return of the same or other property.

SECT. 248. The constable shall deliver such unsold goods and chattels to the person against whom execution had issued as aforesaid, upon his giving bond with sufficient surety, resident in the county, and to the satisfaction of such constable, conditioned that such execution debtor will deliver at the time and place of the next sale, to the constable having in his hands an execution upon the same judgment, the goods and chattels so restored to him, or other goods and chattels of equal value, to be selected by such constable; such value to be determined by an appraisement as herein before directed.

Bond to be made payable to plaintiff and be returned to justice.

SECT. 249. Such bond shall be made payable to the execution plaintiff, and shall be returned by the constable to whom it is given with the execution, to the justice who issued the same.

Same to remain a lien on the property unsold.

SECT. 250. The return, when so made, shall be and remain a lien upon all such goods and chattels as may remain unsold, whether a bond be given as aforesaid or not.

Re-appraisement on new execution.

Other property may be taken.

SECT. 251. Whenever a new execution shall be issued after such return, either party may have a re-valuation of such goods and chattels so levied upon, by paying the costs thereof; and other goods and chattels may be levied upon by virtue of such new execution, as often as issued, subject to be appraised and sold in the manner and for the price above prescribed.

When the condition of bond considered broken.

SECT. 252. If the debtor in execution shall not at the time and place mentioned in the condition of such last mentioned delivery bond, deliver to the proper constable the goods and chattels to him restored as aforesaid, or other goods and chattels of equal value, as above provided, the condition of said bond shall be considered as broken.

Suit thereon; no stay or appraisement except for the surety.

SECT. 253. The obligee in such bond may maintain an action thereon, and recover damages for the breach of the conditions thereof, in the same manner and to the same extent as

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herein before provided in the case of delivery bonds; and there shall be no stay of execution or appraisement of property on a judgment on any delivery bond specified in this article, except as to the surety in any such delivery bond. ARTICLE 12.

Debtor may sell the property levied on, applying the proceeds to the execution.

SECT. 254. Any execution debtor may sell any property of his that has been levied upon by virtue of an execution, and for which a delivery bond has been given, at private sale, for not less than two thirds of its value as appraised by said appraisers, without incurring a forfeiture of such delivery bond, if he shall bona fide apply the proceeds of such sale, or as much thereof as may be necessary, to the satisfaction of such judgment and execution.

Remedy of bail, &c.

Bail may have execution issued vs. principal.

SECT. 255. Where any bail for the stay of execution under this article, shall be unwilling to continue as such bail for the full term of such undertaking, such bail may go before the justice on whose docket he stands as bail, or the justice having such docket in his possession and the right to issue execution on such judgment, and make and file his affidavit that he is apprehensive of being made liable to pay such judgment, if execution be further delayed.

Make affidavit.

Justice thereupon to issue execution.

SECT. 256. Upon the making and filing of such affidavit, and at the request of such affiant, such justice shall issue execution forthwith against the goods and chattels of the judgment debtor.

Defendant on giving new security and paying costs, may stay execution.

SECT. 257. But if the judgment debtor against whom such execution may have issued, will, within ten days after the issuing thereof, give other additional bail for the unexpired time for which a stay of execution may be had, and will pay or secure the costs of such execution, the same shall be recalled, and no further proceedings shall be had on such execution.

Judgment to stand for use of bail paying the debt, who may have execution.

SECT. 258. In the case of payment of the judgment by the bail for the stay of execution, the original judgment against the principal shall remain valid and in force for the use of such bail, who may at any time sue out execution thereon for his own use, after such payment by him of such judgment, or any part thereof; which execution shall be so endorsed by the justice, together with the amount which such bail has paid, and which he shall be entitled to recover.

Such bail may have transcript.

SECT. 259. Such bail shall also be entitled to a certified transcript of such original judgment for his own use, which shall have the same force and effect as transcripts in other cases.

Constable to appraise and sell as soon as possible.

SECT. 260. Whenever an execution, issued on any judgment rendered by a justice of the peace, shall be delivered to a constable to be executed, it shall be the duty of such constable to cause the goods and chattels which he may have levied on by virtue thereof, to be appraised as in this article directed, and

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offered for sale with as little delay as possible, after receiving such execution.*

Capias ad satisfaciendum.

No ca. sa. to be issued except, &c.

SECT. 261. No execution shall be issued by any justice of the peace against the body of any execution debtor, except as hereinafter provided.

Affidavit; contents thereof.

SECT. 262. The creditor wishing such execution, his agent or attorney, shall make and file with the justice whose duty it may be to issue an execution in the cause, an affidavit charging the debtor with fraudulently concealing, removing, conveying, or transferring his property subject to execution, with intent to defraud or delay such creditor; or that he has moneys, rights, credits, or effects, with which the judgment of such creditor, or some part thereof, might be paid, and which he fraudulently withholds or conceals, with a view to delay or defraud his creditor.

What affidavit need not state.

SECT. 263. Such affidavit need not designate specifically any property, moneys, or effects fraudulently removed, transferred, or concealed, conveyed or withheld by such debtor; but the justice or jury, in determining the matters in issue between the parties, on a scire facias hereinafter authorized, if the finding be for the creditor, shall designate in such finding the moneys, effects, property, debts, or things in action which have been thus removed, concealed, transferred, conveyed, or withheld, and also the value thereof.

Court to determine specific effects concealed.

On filing such affidavit summons to issue.

SECT. 264. Upon the filing of such affidavit, it shall be the duty of such justice to issue a summons requiring such debtor to appear and show cause before such justice why execution against his body should not issue on such judgment.

Returnable in ten days, and how served.

SECT. 265. Every such summons shall be made returnable in ten days from the date thereof, and shall be served and returned in the same manner as is provided in this chapter for the service of a summons in other cases.

Of the trial thereon.

SECT. 266. If such debtor shall fail to appear on the return day of such summons, and show cause, according to the requirements thereof, the justice may proceed to enter his default therein, and hear and determine the same in his absence, or a jury may be empannelled for that purpose at the request of the creditor.

Issue may be made, and trial had by justice or jury.

SECT. 267. If such debtor appear and plead to such affidavit any sufficient matter in bar to the issuing of such execution, and issue be taken to the country thereon, it shall be tried by the justice by agreement of parties, or a jury shall be empannelled, at the request of either party, to try the same, as in other cases.

If debtor will not surrender property, and if

SECT. 268. If any such hearing or trial shall be determined against such debtor, and he will not forthwith, or as soon as

* The declaration of a constable, that the goods offered for sale on execution are the property of the execution debtor, and that he will sell them as the law directs, is in no warranty of the title. *Morgan* v. *Fencher*, 1 Blackf. 10.

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may be, surrender, for the benefit of such creditor, the moneys, effects, property, debts, or things in action, which may be found by such justice or jury to have been removed, concealed, transferred, conveyed, or withheld, or pay the value thereof, an execution shall issue against the body of such debtor, who shall by virtue thereof be arrested and committed to the prison of the county, there to be confined until duly discharged according to law. *

found against him, ca. sa. to issue.

SECT. 269. If it be made to appear in such affidavit, or any subsequent affidavit, that the execution plaintiff has reason to believe, and does believe, that such execution debtor will leave the state before trial and determination of the matters alleged in such affidavit, a capias ad respondendum shall forthwith issue against such execution debtor, and be served and executed as in a personal action.

Debtor about to leave state, capias may issue.

SECT. 270. Such execution debtor, on being arrested on such capias ad respondendum, may be released from arrest on giving special bail, and may be surrendered by such special bail in discharge of his recognizance, in like manner as is provided for in other cases of special bail in this chapter.

May give bail, and bail may surrender, &c.

SECT. 271. The condition of the recognizance of such special bail shall be, that such execution debtor will surrender his body in execution, if a capias ad satisfaciendum shall be awarded against him.

Condition of recognizance of bail.

SECT. 272. The constable making such arrest may take such recognizance of bail, either before or after such debtor is committed to prison, and shall make due return of his proceedings.

Constable may take bail.

SECT. 273. A scire facias may issue on such recognizance of special bail, and judgment may be rendered thereon, in like manner as in other cases of recognizance of special bail; but the bail shall only be liable for the amount of money, effects, property, debts, and things in action fraudulently withheld, concealed, conveyed, removed or transferred by such execution debtor, as found by the court or jury trying the issue on the proceedings on such affidavit.

Sci. fa. against bail, extent of his liability.

Satisfaction of execution, &c.: no stay in certain cases.

SECT. 274. In all cases where a constable shall have received money in payment, or in part payment, either voluntarily made by any defendant or execution debtor, or as the proceeds of the sale of property by virtue of an execution in his hands against the goods and chattels of such debtor, it shall be the duty of such constable to pay over said money to the proper justice without delay.

Constable to pay over money collected without delay.

* See post, section 309 of this chapter. See also ante, page 754, article 13.

A debtor arrested on a ca. sa. cannot, under the statute, be discharged from custody by delivering to the constable a schedule of property situate out of the state, and swearing that he had no other property subject to execution, &c. *Webster* v. *Farley*, 6 Blackf. 163.

The phrase "property subject to execution," as used in the statute, means those goods which the act does not exempt from seizure; not property which is beyond the bailiwick of the officer. Ibid.

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Execution satisfied, returned with money.

SECT. 275. In case such execution shall be fully paid and satisfied, either by sale or otherwise, it shall be the duty of such constable to return it, with the money made, forthwith.

Overplus of sales to be returned to debtor.

SECT. 276. When any property levied upon by virtue of an execution, shall sell for more than will satisfy the amount of the judgment, interest and costs, including the constable's lawful costs thereon, it shall be the duty of such constable to render the overplus to such execution debtor or debtors.

Proceedings against constable failing to return execution, or making false return, or failing to pay.

SECT. 277. For a failure to serve or return an execution, or to pay over any money collected by him, as required by law, or for making a false return, the constable shall be liable to the injured party, and may be proceeded against either by scire facias before a justice of the peace, or he and his sureties may be sued on their bond.

What may be recovered from constable and his sureties.

SECT. 278. In either case, the aggrieved party shall be entitled to recover of the constable, in one instance, and of him and his sureties in the other, the full amount collected or received and withheld, or which he might and should have collected and paid over, with interest, and ten per centum thereon, and costs; but no interest or per centum shall be allowed on costs. *

No stay or appraisement on executions on certain judgments.

SECT. 279. The provisions of this article, as to a stay of execution and appraisement of property levied on by execution, shall not extend to judgments and executions against state, county, or township officers, or executors, administrators, or guardians, for misfeasance, malfeasance, or nonfeasance in office, nor against attorneys for refusing to pay over moneys by them collected as such, nor against any bank, savings institution, or insurance company, nor to judgments on official or forfeited delivery bonds.

Restriction applicable to principals only.

SECT. 280. The provisions and restrictions of the last preceding section shall apply to the principals in the said official bonds only, and not to their sureties; and in all cases of judgments or decrees in any court, the principals specified in the last preceding section shall not be entitled to an appraisement of their property, nor to a stay of execution; but their sureties shall always have a right to such appraisement and stay of execution, as in any other case.

Two preceding sections, when in force.

SECT. 281. The last two preceding sections shall be in force from and after their publication in the Indiana Journal and State Sentinel.

* On the trial of a suit by scire facias against a constable for failing to return a fieri facias, he may prove, under the general issue, to reduce the damages, that, during the whole of the time that the execution was in his hands, the execution debtor was insolvent. *Baker* v. *Mortimer*, 5 Blackf. 32.

Whether the insolvency of the execution-debtor may be pleaded in bar to such a suit? Quære. Ibid.

In a suit on a constable's bond for an escape, if it appear that since the commencement of the suit, the debt for which the judgment was obtained has been paid by a surety of the debtor, the plaintiff ought not to recover more than nominal damages. And the circumstance that the suit was prosecuted for the benefit of the surety can make no difference. *The State* v. *Miller*, 5 Blackf. 381.

The omission to assess nominal damages, when justice has been done, is no cause for a new trial. Ibid.

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ARTICLE XIII.

Of constables and their duties.

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306. Constable's power of serving process to extend generally over the county—same authority as sheriff, etc., in executing mesne and final process — process to have same force as if issued by circuit court.
307. Liability of bidders at constables' sales.
308. Damages for whose use in such case.
309. Copy of process shall be delivered to jail keeper with prisoner.

SECT. 282. Constables shall be elected for the term of one year, and shall continue in office until their successors shall be elected and qualified; but they shall not be compelled to serve longer than three months after the expiration of one year.* To be elected for one year, etc.

SECT. 283. Every constable, before he enters upon the duties of his office, shall take an oath or affirmation before some competent authority, to support the constitution of the United States and of this state, and faithfully to discharge his duties as such constable during his continuance in office, according to the best of his skill and ability. Oath.

SECT. 284. Every constable before taking the oath of office shall execute a bond, with at least two freeholders of the proper county as his sureties, to the acceptance of the board of county commissioners, payable to the state of Indiana, in a penal sum of not less than three hundred nor more than two thousand dollars, to be determined by the board of county com- Bond.

* As to election, etc., see ante, page 100, sections 26, 27; page 134, sections 66 to 71: —certificate of election, etc., page 105, section 56; page 135, section 70: — oath of office, page 108, sections 77, 78, 81, 82, 84: — bond, page 109, sections 86, 90, 91, 92, 93, etc.: — resignation, page 117, sections 139, 146: — supplying vacancies, page 119, sections 160, 162, 163, 165.

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missioners, conditioned for the safe keeping and paying over to the proper person or authority, of all moneys which may be collected or received by him, or which may otherwise come into his hands by virtue of his office; and for the due, honest, and faithful discharge and performance of all and singular his duties as such constable, during his continuance in office, in all things agreeably to law.

When county auditor shall approve bond and administer oath.

SECT. 285. If any such bond be executed in vacation of such board, it shall be approved by the clerk of such board; and such clerk is hereby authorized to administer to such constable the official oath in all cases.

Approval to be endorsed on bond; bond and certificate of oath to be filed with clerk of circuit court and registered.

SECT. 286. When such bond shall have been so approved, it shall be the duty of the clerk of the board of county commissioners, to endorse his approval on such bond; and the constable shall forthwith cause the same, together with the certificate of the officer who administered his official oath, to be filed in the office of the clerk of the circuit court of the proper county, who shall register the same in a book to be kept for that purpose.

Vacancies, how filled.

SECT. 287. Whenever a vacancy shall happen in the office of constable in any township, by death, removal, resignation, disqualification, or by any cause, the board of county commissioners of the proper county shall, at their next session after such vacancy, appoint a suitable person to fill such vacancy until the next annual election for constables, and until a successor be appointed and qualified.

Oath and bond.

SECT. 288. The constable so appointed shall take a like oath and give a like bond as is required in other cases of constables.

Special constable, when and how appointed.

SECT. 289. A justice of the peace may appoint a constable or constables for a special purpose, either in a civil or criminal case, whenever such appointment may become necessary on account of the sickness or absence of a regular constable, or in any other emergency rendering such special appointment absolutely necessary; and he shall require the constable so appointed to take the oaths required in other cases. *

To take oath.

Authority, duty, and fees of such special constable.

SECT. 290. The person so appointed by the justice, after taking such oath, shall have the same authority, and be subject to the same penalties, and entitled to the same fees, as other constables.

Justice liable for conduct of constable by him appointed.

SECT. 291. Such justice shall stand as surety, and shall be in that character civilly liable, he and his sureties, for any neglect of duty, or any illegal proceedings on the part of such constable, so by him appointed.

* If the defendant, in pleading a warrant in justification of an arrest, aver that he was an acting deputized constable of the county, the word *deputized* may be considered as surplusage; and the plea will be good, though it do not set out the defendant's appointment, nor allege that the warrant was shown to the plaintiff, nor that it was returned. *Patterson* v. *Kise*, 2 Blackf. 127.

Though two offences against the party be charged in the warrant, yet, if the justice has jurisdiction over both, the constable is bound to execute it. Ibid.

A person acting as a special constable to execute a warrant, is authorized to command assistance, in case of opposition. Ibid.

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ARTICLE 13.

Attendance and duties required of constable.

SECT. 292. Each and every constable shall attend before the proper justice on the return day of process, keep order in the justices' court, and execute all lawful commands of the justice, under pain of a fine, not exceeding three dollars for each neglect and refusal, to be assessed by such justice, or some other justice of the proper county, against such constable.

Fine for neglect of duty.

Fine, how assessed.

SECT. 293. No such fine shall be assessed until the constable shall have been informed or notified of the complaint or charge, and shall have an opportunity to be heard in his defence, which defence may be made on his own oath, or the testimony of some disinterested person, at the discretion of the justice.

Powers of constables in civil and criminal cases.

SECT. 294. All constables shall be ministerial officers in justice's courts, in their respective townships, in civil cases, and in their respective counties, in criminal cases; and civil process may be executed by them throughout the county, under the provisions and restrictions of law. *

Duties required of constable.

SECT. 295. It shall be the duty of every constable to serve and execute all warrants, writs, precepts, executions, and other process to him directed and delivered, and in all respects whatever, to do and perform all things pertaining to the office of constable. †

May demand assistance.

SECT. 296. In discharging their duty, in any respect whatever, constables may call to their aid the power of their county, or such assistance as may be necessary.

When he may execute process on Sunday.

SECT. 297. In all cases where process is authorized to be issued on Sunday, it shall be lawful for constables to whom such process may be directed, to serve the same on Sunday.

Shall duly return process.

SECT. 298. It shall be the duty of every constable to make due return of all process to him directed and delivered, at the proper office, and on the proper return day thereof; or in case the judgment be appealed, to forthwith return such execution, noting the fact in his return.

Shall note time of receiving and serving process.

SECT. 299. It shall be the duty of every constable, on the receipt of any writ, precept, or other process, subpœnas excepted, to note thereon the time of receiving the same; he shall also note on every writ, precept, subpœna, or other process, the time and manner of serving or executing it.

"Not found," when to be returned.

SECT. 300. No constable shall make a return on any process of "not found," as to any defendant, unless he shall have been once, at least, to the usual place of residence of such defendant, if such defendant have any in the county.

May arrest fugitives any where in the state.

SECT. 301. In cases of the absconding or flight of offenders, or persons charged in criminal or state cases, a constable may pursue and take or recapture the escaping, absconding, or fleeing person, any where in the state, and convey him back to the proper county, to be dealt with according to law.

* As to proceedings, &c. in criminal cases, see post, part IV, chapter 53, article 3; and also chapter 55. *See Stewart* v. *The State*, 4 Blackf. 171.

† Although, in a justice's warrant for the apprehension of an offender, the time when the offence is alleged to have been committed be subsequent to the date of the warrant, the constable is justifiable in executing it. *Patterson* v. *Kise*, 2 Blackf. 127.

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But shall make proof of his right to arrest before a justice.

SECT. 302. But when a constable shall pursue a fugitive from justice or legal custody, from one county to another, he shall go before some justice of such county in which such fugitive may be, either before or after he shall have made an arrest of such fugitive, and by his own oath, or otherwise, satisfy such justice, that the warrant or other process by virtue of which he has made such arrest, or seeks to do so, of such fugitive, was legally issued in the county from which such fugitive has fled, or that such fugitive has escaped from legal custody in the last mentioned county, and that he is in pursuit of such fugitive.

Justice shall thereupon endorse the warrant or issue one.

SECT. 303. Upon being so satisfied, such justice, if a warrant or other process be produced to him, shall endorse his name thereon as such justice, or, in case of other escape from custody and pursuit, shall issue his warrant to such constable.*

And the same shall authorize the conveyance of the fugitive to the proper county.

SECT. 304. Such warrant or endorsement shall be sufficient authority for such constable to retake or retain such fugitive in his custody, and convey him to the county from which he may have escaped or fled.

Constable's duty as conservator of the peace.

SECT. 305. It shall be the duty of every constable to apprehend, on view or warrant, and bring to justice, all felons and disturbers of the peace, and violators of the criminal laws of this state; to suppress all riots, affrays, and unlawful assemblies which may come to his knowledge; and generally to keep the peace in his proper county.

Power of constable in serving process, generally to extend over the county.

In mesne or final process, same authority as sheriff, etc.

Such process to have same force as if issued by circuit court.

SECT. 306. In serving all process in either civil or criminal cases, and in doing his duties generally, when not otherwise restricted by law, the authority of a constable shall extend throughout the whole county in which he may be appointed; and in executing and serving mesne or final process issued by a justice of the peace, a constable shall have and exercise the same authority and powers over goods and chattels and the persons of parties, as is granted by law to a sheriff or coroner under like process issuing from courts of record; and such process issuing from a justice or justices of the peace, shall have the same force and effect as if issued from a court of record, unless in cases specially provided for by law.†

Liability of bidders at constable's sale.

SECT. 307. Any person who shall purchase or bid off property at a constable's sale, and shall fail or refuse to pay therefor agreeably to the terms of sale, shall be liable to damages to the amount of such purchase with ten per cent. damages thereon, to be recovered by suit in any court of competent jurisdiction, in the name of the party to whom the money arising from such

* If a warrant issued by a justice of the peace of one county, be endorsed under the statute, by a justice of another county, the endorsement is prima facie evidence that an oath authorizing the endorsement had been previously made. *Brown* v. *Connelly*, 5 Blackf. 390.

† A constable is virtually within the provisions of the statute requiring sheriffs to pay rent before the removal of goods taken in execution on demised premises; and, when sued for improperly paying rent, he is bound to give some evidence that the rent was due. *Ungles* v. *Graves*, 2 Blackf. 191.—See *Darter* v. *The State*, 5 Blackf. 61.

See, also, ante, page 829, sections 214, 215, 216.

For the decisions of the supreme court relating to executions, etc., see ante, pages 740 to 758, inclusive.

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sale would be due and payable; or such constable may proceed by notice and motion, or re-expose such property to sale, as specified in the thirteenth article of the fortieth chapter of these Revised Statutes, and recover as therein provided.* ARTICLE 14.

SECT. 308. One half of such ten per centum damages shall go to the use of the constable holding such sale, and the other half to the plaintiff in the execution on which such sale was made. Damages to be for whose use.

SECT. 309. Whenever it shall be necessary for any constable to commit a person to prison, he shall, together with his prisoner, deliver a certified copy of the process by virtue of which such commitment is made, to the keeper of the prison; which shall be a sufficient authority to such keeper to retain such prisoner in custody. Copy of process to be delivered to keeper of jail with prisoner.

ARTICLE XIV.

Miscellaneous provisions.

SECTION

310. Justice's bond.
311. Payable to the state—may be sued on by any person interested, etc.
312. To be filed and registered in clerk's office.
313. Oath of office.
314. Certificate of same, where filed.
315. Penalty for acting before giving bond, etc.
316. When he may issue process on Sunday.
317. When mandamus may issue against justice.
318. Justice and constable may not purchase judgment.
319. Penalty therefor.
320. Justice to receive all moneys collected or offered in payment of judgments.
321. Shall pay over same without delay.
322. Proceedings for failure to pay.
323. Judgment for amount due with ten per cent.—no stay.
324. Complaint in such case, when it may be made to justice of adjoining township.

SECTION

325. Justice to enter satisfaction of judgment in proof of payment.
326. May stay execution until such motion can be heard.
327. To deliver books, dockets, papers, etc., to successor.
328. No successor, then to nearest justice.
329. When to be absent more than thirty days, shall deposite dockets, etc.
330. Persons having such dockets to deliver them to those entitled.
331. Justice receiving them shall give receipt.
332. Penalty for neglect of five preceding sections.
333. What papers are to be so deposited.
334. When justice may transfer judgments from such docket to his own and proceedings thereon.
335. Successor may proceed in all former judgments.
336. Bail removing, creditor may have a transcript.
337. Proceedings as in other transcripts.
338. Penalty for refusing a transcript.

*See ante, page 752, sections 429, 430.

A constable may sue in a justice's court, by notice and motion, for the price of goods sold by him on execution, with ten per cent. damages, if the demand do not exceed one hundred dollars. *Steepleton* v. *Neely*, 6 Blackf. 76.—See *Cowgill* v. *Wooden*, 2 Blackf. 332.

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SECTION
339. Transcript to be entered on docket, and sci. fa. thereon.
340. After trial, or two returns of "not not found," execution awarded.
341. Stay to be only from date of original judgment.
342. Sci. fa. or debt may be brought against special bail.
343. Special bail may surrender at any time before judgment against himself.
344. Must notify plaintiff of surrender.
345. Defendant to give new bail, replevy, pay judgment, or be committed.
346. Allowance to constable for keeping live stock, etc.

Justice's bond.

SECT. 310. Every person elected to the office of justice of the peace in any of the counties of this state, shall give to the clerk of the circuit court of the proper county, a bond in such sum as the clerk may deem sufficient, not less than one thousand dollars nor more than three thousand dollars, with good freehold security, to be approved by such clerk, conditioned for the faithful discharge of his duties as such justice, and for paying over on demand, to the person entitled or authorized to receive the same, all moneys that may come into his hands as such justice of the peace during his continuance in office.*

Payable to state—may be sued on by any one interested.

SECT. 311. Such bond shall be made payable to the state of Indiana, and shall be for the benefit of any person concerned or aggrieved; and may be put in suit from time to time, in any court of competent jurisdiction, and shall not be void on the first recovery thereon.†

Filed and registered in clerk's office.

SECT. 312. Such bond shall be filed and registered in the office of the clerk of the circuit court of the proper county.‡

Oath of office.

SECT. 313. Every justice of the peace, before he enters on the duties of his office, shall take an oath or affirmation before the clerk of the circuit court of the proper county, or some officer qualified to administer oaths, to support the constitution of the United States and of the state of Indiana, and that he

* As to the number of the justices of the peace, etc., see ante, page 99:—election, page 135:—commission, page 104; section 54:—resignation, page 117, section 139:—supplying vacancy, page 136, sections 74, 75, 76:—term of office in case of vacancy, page 120, section 168; and see constitution, ante, page 55.

† If a justice of the peace, in the discharge of any of his ministerial or judicial duties, act corruptly, to the injury of a party, his conduct is a breach of the condition of his official bond. *The State* v. *Flinn*, 3 Blackf. 72.

In case of a breach, by a justice of the peace, of the condition of his official bond, his death does not discharge the responsibility of his sureties. If the justice were, in such case, the sole obligor, or the surviving obligor, the action would survive against his executors or administrators. *The State* v. *Houston*, 4 Blackf. 291.

In a declaration against a justice of the peace and his sureties, on the official bond of the justice, it is not a sufficient assignment of a breach, to state generally that the justice had not faithfully discharged his duty; but the breach of some particular duty, of which breach the relator has a right to complain, must be set out. *The State* v. *Littlefield*, 4 Blackf. 129.

The sureties in such a case are not liable unless the act complained of was done corruptly, or with a knowledge that it was unlawful. Ibid.

A justice of the peace rendered a judgment for *A*, the plaintiff, and *B*, the defendant appealed. The justice failed to transmit the papers in time to the clerk's office, and the appeal was dismissed. *B* sued the justice for his neglect. *Held*, that the declaration, in such case, should state that *B* had a good defence to the whole or a part of *A's* demand. *Crews* v. *Sheets*, 4 Blackf. 275.

See ante, pp. 691 to 694.

‡ See ante, page 654, section 58.

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will faithfully discharge his duty as such justice of the peace, according to the best of his judgment, skill, and ability.

Certificate thereof, where filed.

SECT. 314. The officer administering such oath shall make out a certificate thereof, to be filed in the office of the clerk of the circuit court of the proper county.*

Penalty for acting as justice before giving bond and taking oath.

SECT. 315. If any person elected to the office of justice of the peace in any county in this state, shall exercise any of the rights and powers of a justice of the peace, before taking such official oath or affirmation, and making and filing such bond, on conviction thereof by presentment or indictment in the circuit court of the proper county, he shall be fined by the jury trying the cause in any sum not exceeding two thousand dollars.

When may issue process on Sunday.

SECT. 316. Justices of the peace are authorized to issue any process on Sunday that they might issue on any other day, upon the applicant for such process making and filing with such justice, in addition to the usual affidavit in such case, an affidavit that the person against whom such process is prayed is about to abscond from the county, and that such affiant verily believes that such person will be out of the reach of such process if the issuing thereof should be delayed to another day.

When a mandamus may be issued against justice.

SECT. 317. If any justice of the peace refuse to enter a judgment when by law he ought so to do, the circuit court of the proper county is authorized to issue a mandamus to compel such justice to enter such judgment.

Justice and constable not to purchase judgments.

SECT. 318. It shall not be lawful for any justice of the peace or constable of the same township, to purchase, directly or indirectly, any judgment, or part thereof, on the docket of such justice, or any docket in his possession.

Penalty therefor.

SECT. 319. If any justice or constable shall offend against the provisions of the above section, he shall be fined for each offence, upon conviction thereof, on presentment or indictment in the circuit court of the proper county, in any sum not less than five dollars nor more than one hundred dollars, with costs.

Justice to receive all money collected or offered on judgments.

SECT. 320. It is hereby made the duty of justices of the peace to receive from constables all moneys by them collected on process issued by the justices respectively; also all moneys the collection of which may have been entrusted to them, or which may be offered to them on any judgment, account, or demand on their dockets or in their possession.

Shall pay over same without delay.

SECT. 321. They shall pay over all moneys so collected or received by them in their official capacity, to the person or persons entitled thereto, or duly authorized to receive the same, without delay.

Proceedings against justice failing to pay over.

SECT. 322. If any justice shall neglect or refuse to pay over any money by him collected or received in his official capacity, when thereunto requested or demanded at the office or residence of such justice, he being present, by the person entitled thereto or duly authorized to receive the same, it shall be lawful for such person to complain to some other justice of the township in which such delinquent justice resides, whose duty it shall be

*See ante, page 108, section 84.

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forthwith to issue a summons to some constable of his township, commanding him to summon such delinquent justice forthwith to appear before him, and show cause, if any he have or can, why judgment should not be rendered against him for the amount of money so by him collected and not paid over.

Judgment rendered for the amount and ten per cent.; no stay of execution.

SECT. 323. If such delinquent justice shall not appear, such summons having been returned "personally served," or if he do not show good cause, the justice who issued such summons shall render judgment against him for the amount of money so by him collected or received and not paid over, together with ten per centum damages thereon and costs; and in such case there shall be no stay of execution.

When complaint may be made to justice of adjoining township.

SECT. 324. If there be no justice in the township in which such delinquent justice resides, who is legally competent to act on such complaint, then it may be made to the nearest justice of an adjoining township in the same county.

To enter satisfaction of judgment on proof of payment.

SECT. 325. Justices shall hear and determine any application to enter satisfaction of judgments on their dockets, whenever the debtor alleges payment or satisfaction, the creditor, his agent or attorney, first having reasonable notice thereof; and if sustained by competent proof, satisfaction shall be entered accordingly.*

May suspend execution until hearing of such motion, security being given.

SECT. 326. If in any case, on such motion being made, it be necessary to suspend or recal any execution before the final hearing of such application, the justice shall have power so to do, on the creditor being made safe in his demand, by bond and surety, to pay the amount due, in the event of such motion failing.

Books, papers, statutes, &c. to be delivered to successor.

SECT. 327. Whenever the office of any justice of the peace shall become vacant, all the dockets, papers, laws, and statutes pertaining to his office, shall, if a successor be chosen and qualified at the time, be delivered over to such successor.

If no successor, then to the nearest justice, until a successor be chosen.

SECT. 328. But if there be no successor chosen and qualified, then such justice shall deliver said dockets, papers, laws, and statutes to the nearest justice in the township, if any there be; and if there be none, then to the nearest in the county, to be kept by him until a successor shall be chosen and qualified, and then delivered over to such successor on request.

If absent for more than 30 days shall deposit dockets, &c.

SECT. 329. If any justice shall absent himself from his township, county seat, or incorporated town for more than thirty days together, he shall deposit the dockets, papers, laws, and statutes belonging to his office with the nearest justice, as provided in the three preceding sections, to be kept and acted on by him in the cases and manner hereafter provided, until such absent justice shall return, or a successor be chosen and qualified, and then to be delivered to such justice or successor.

* If satisfaction of a judgment be entered by a justice of the peace on his docket, he and his sureties are liable for the amount to the judgment-creditor; no matter for what consideration the satisfaction was entered, unless the creditor was a party to the arrangement. *Modisett* v. *The Governor*, 2 Blackf. 135.

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Persons having such dockets, &c. shall deliver them to those entitled thereto.

SECT. 330. In case of a vacancy or absence of a justice of the peace, it shall be the duty of any person having in his custody any such dockets, laws, or papers, to deliver them on demand to the proper justice.

Justice receiving them shall give a receipt.

SECT. 331. A justice so receiving by succession or on deposit, any such laws, statutes, dockets, or papers, shall, if requested, give a receipt therefor to the person from whom he receives the same.

Penalty for neglect of five preceding sections.

SECT. 332. If any person shall refuse or neglect to comply with any of the provisions of the last five preceding sections, he shall, on conviction thereof, by presentment or indictment in the proper circuit court, be fined in any sum not exceeding five hundred dollars and costs; he shall also be responsible in damages at the suit of any person aggrieved by any such neglect or refusal.

What papers are to be deposited on such temporary absence.

SECT. 333. A justice who makes a deposit of his dockets on account of a temporary absence, need not accompany the same with any other papers than those which relate to unsettled business thereon.

When justice may transfer judgments from docket deposited with him to his own docket, and proceedings thereon.

SECT. 334. The justice with whom the docket of another may be deposited during a vacancy or absence, is hereby authorized, while having such docket legally in his possession, to transfer to his own docket any judgment on the docket left with him, that may be due while in the possession of such justice, at the request of the judgment creditor or any other party interested, and to issue execution thereon, or to give a transcript thereof, in the same manner as if the judgment and proceedings had been originally had before him; and he shall note such transfer, and the date thereof, in the docket from which such transfer is made. *

Successor of justice may proceed on all judgments on former dockets.

SECT. 335. The successor of any other justice, on obtaining his docket and papers, shall be authorized to issue executions on his judgments, and give and certify transcripts of his proceedings, and proceed in all cases in like manner as if the same had been originally had or instituted before him. †

Bail removing, creditor may have transcript

SECT. 336. If any bail for the stay of an execution on a judgment shall have removed from the county where he may have become such bail, to any other county in this state, and a return be made on an execution against the principal, of no goods or chattels sufficient to make the whole or any part of the judgment, the judgment creditor, his agent or attorney, shall be entitled to a transcript of such judgment, recognizance, or entry of bail for the stay of execution, and the judgment and other proceedings in the case.

* On the docket of justice *A*, which, for some reason not shown, was in justice *B's* hands, there was a receipt purporting to be signed by *B*, of a judgment there entered. *Held*, that the receipt was not admissible as evidence against *B*, without proof of his having executed it. *Modisett* v. *The Governor*, 2 Blackf. 135.

† A justice of the peace with whom the docket of a former justice is legally deposited, may give certified copies from such docket; but the certificate must show that the justice making it has the legal custody of the docket. *Anderson* v. *Miller*, 4 Blackf. 417.

See ante, page 727, section 303 and note.

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Proceedings thereon same as on other transcripts. Penalty for refusing to give a transcript.

SECT. 337. The judgment creditor may proceed, before a justice of the peace of the county where such bail may reside, against him, in the same manner as against the principal defendant in like case of removal from the county.

SECT. 338. If any justice shall refuse or neglect to give to any person entitled thereto, he paying or tendering the lawful fees therefor, any transcript of a judgment, he shall, on conviction, by presentment or indictment in the circuit court of the proper county, be fined in any sum not exceeding one hundred dollars and costs of prosecution, and shall also be liable in damages at the suit of the party injured.

Transcript to be entered on docket, and sci. fa. issued thereon.

SECT. 339. In all cases where a transcript of a judgment of a justice in this state shall be made out and certified by the justice authorized so to do, and delivered to another justice, for the purpose of enforcing execution thereof, the justice to whom such transcript is delivered, shall make an entry thereof in his docket, and issue a scire facias against the judgment debtor to appear and show cause why execution should not issue against him for the amount of the judgment, interest, and costs, as stated in the transcript.

Execution awarded on trial, or on two returns of not found.

SECT. 340. If no good cause be shown, or the judgment debtor do not appear, on the return of such scire facias 'served,' or on two returns of 'not found,' execution shall be awarded and issued for such sum as shall appear to remain unsatisfied, with interest and costs, as in other cases.

Stay of execution only from date of original judgment.

SECT. 341. In such case, a stay of execution, if allowable, shall only be from the date of the original judgment.

Sci. fa. or debt may be brought against special bail.

SECT. 342. The remedy against special bail entered into before a justice of the peace, shall be by scire facias, or action of debt, on the recognizance of bail.

Special bail may surrender principal at any time before judgment against himself.

SECT. 343. Special bail, at any time before judgment shall have been rendered against him as such, on obtaining a bail piece from the justice before whom it was entered, or his successor in office, and paying all costs of any proceedings against him as such special bail, may seize and surrender his principal to such justice, or his successor in office.

Shall notify plaintiff of surrender.

SECT. 344. The special bail shall notify the plaintiff, his agent or attorney, if resident in the county of such surrender; and thereupon such special bail shall be fully exonerated.

Defendant to give new bail, pay, or replevy, or be committed.

SECT. 345. On such surrender being made, and an exoneretur being entered by the justice, he shall require such principal to give other special bail forthwith; or if a judgment be rendered against him, to replevy the same, with interest and costs, if repleviable; and in default thereof, to commit him to the prison of the county, there to remain until discharged by due course of law.

Allowance to constable for keeping live stock.

SECT. 346. When any live stock shall be taken in execution, it shall be the duty of the justice who issued the execution, to make such allowance to the constable for keeping the same as he may think reasonable, not exceeding twenty-five cents per day for a horse, and in the like proportion for other animals.

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ARTICLE XV.

Forms for justices of the peace.

SECTION
347. Proceedings not void for want of form, &c., if substance is contained therein.
No. 1. Summons.
2. Capias.
3. Subpœna.
4. Judgment.
5. Judgment of non-suit.
6. Judgment by default.
7. Judgment on trial for defendant.
8. Jury trial and judgment therein.
9. Judgment in replevin for plaintiff; for defendant; do., with award of return.

SECTION 347—*Continued.*
10. Execution of fi. fa.
11. Execution of ca sa.
12. Writ of domestic attachment.
13. Affidavit for landlord's warrant.
14. Warrant thereon.
15. Writ of replevin.
16. Sci. fa. on transcript, or vs. special bail, justice, or constable.
17. Judgment in sci. fa.
18. Dedimus.

SECT. 347. The following forms shall be adopted and pursued by justices, as nearly as the nature of the case will permit; but no writ, process, entry, or judgment shall be deemed invalid or set aside for want of form, nor for any misnomer of any action, defence, or writ, nor for any technical defect, if it contain the substance: Proceedings not void for want of form, if they contain substance.

No. 1. *Summons.*

Summons.

State of Indiana, —— county, sct:
To any constable of —— township, greeting:
You are hereby commanded to summon —— —— to appear before me, J— H—, a justice of the peace of said township, at my office therein, on the —— day of ——, at —— o'clock, in the ——noon, to answer —— ——, of a plea of (insert the name of the action), not exceeding one hundred (or fifty) dollars:—Hereof make due service and return.
Given under my hand and seal this —— day of ——, 18—.
J— H—, [SEAL.]
Justice of the peace.

No. 2. *Capias ad respondendum.*

Capias.

State of Indiana, —— county, sct.
To any constable of —— township, greeting:
You are hereby commanded to take —— ——, if he may be found in said county, and forthwith bring him before me, J— H—, a justice of the peace of said township, at my office therein, to answer —— —— of a plea of (insert the name of the action),

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not exceeding one hundred (or fifty) dollars, and notify the plaintiff, his agent, or attorney, of such arrest: Hereof make due service and return.

Given under my hand and seal this —— day of ——, 18—.

J— H—, [SEAL.]
Justice of the peace.

No. 3. *Subpœna.*

Subpœna.

State of Indiana, —— county, sct.

To any constable of —— township, greeting:

You are hereby commanded to summon —— —— to appear before me, J— H—, a justice of the peace of said township, at my office therein, on the —— day of ——, at —— o'clock, in the ——noon of said day, then and there to testify in a cause wherein —— —— is plaintiff and —— —— is defendant, on behalf of the ——; and this —— shall not omit under the penalties prescribed by law: Hereof make due service and return.

Given under my hand and seal this —— day of ——, 18—.

J— H—, [SEAL.]
Justice of the peace.

No. 4. *Judgments, &c.*

Judgment.

A— B—, plaintiff,
vs.
C— D—, defendant,
} In (as the form of action is).

(After noting the previous proceedings, with the constable's return, and time of trial, say,) This day come the parties in their proper persons, (or by agents or attorneys, if the case be so,) and the cause and proceedings, and all things touching the same, being fully heard and inspected: It is therefore considered that the said plaintiff (or defendant) recover of said defendant (or plaintiff) the sum of —— for his debt and damages, (or damages, as the form of action is,) with interest thereon at the rate of six per centum per annum from the date of this judgment till paid, with costs of suit taxed at ——.*

*NOTE.—In rendering judgments in actions of debt, the principal sum is called the *debt*, and the interest to the time of rendering the judgment, *damages*. The usual form of judgment in such case is, that "the said plaintiff recover of said defendant the sum of —— dollars for his debt, and the sum of —— dollars for his damages, making in all the sum of —— dollars," &c. See 1 Blackf. 56.—But it will be sufficient, according to the form in the statute, to say that, "the said plaintiff recover of said defendant the sum of —— dollars for his debt and damages," &c.; omitting to specify the debt and damages separately.

In actions of covenant and assumpsit, the sum recoverable, including interest, if the plaintiff be entitled to interest, constitutes the plaintiff's damages, and the judgment in such case is, that "the said plaintiff recover of the said defendant the sum of —— dollars for his damages," &c., (as in the form.)

A judgment rendered for a certain sum, *in current paper money*, is erroneous. *Duerson* v. *Bellows*, 1 Blackf. 217.

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Judgments in assumpsit, covenant, trespass, or trespass on the case, or trover, which sound in damages, may be in the above form, substituting the word "damages" for the words "debt and damages." ARTICLE 15.

If the plaintiff is to be non-suited for not appearing, say:

No. 5.

"Comes the defendant, but the plaintiff being called, comes not, nor is his suit further prosecuted; it is therefore considered that the plaintiff be non-suited, and that the defendant go hence without day and recover of the plaintiff his costs by him about his defence herein expended." Judgment of non-suit.

If the defendant does not appear, and the case proceeds, say:

No. 6.

"Comes the plaintiff, but the defendant, though called, comes not; and it appearing that he has been duly served with process, and the cause being fully heard and inspected: It is therefore considered," &c. (as in form No. 4.) Judgment by default.

No. 7. *General judgment for defendant on trial.*

Commence as in No. 4, and on coming to the judgment say: "It is considered that the plaintiff take nothing by his suit, and that the defendant go hence and recover of the plaintiff his costs," &c., (as in No. 5.) Judgment on trial for defendant.

No. 8. *Jury trial and judgment.*

After stating the appearance of the parties as in No. 4; or of the plaintiff, the non-appearance of the defendant and service of process as in form No. 6, as the case may be, say: "And a jury being summoned at the request of the plaintiff, (or defendant, as the case may be,) who being called, likewise come, to-wit, (here insert their names) good and lawful men of said county, who being duly elected and sworn well and truly to try the cause submitted to them, between the parties aforesaid, and a true verdict to give according to evidence, return the following verdict, to-wit, (here insert the verdict). It is therefore considered that the plaintiff (or defendant, as the verdict may be,) recover," &c., as in form No. 4. Or if the case stand on default, and the jury are sworn to inquire of the damages only, after the word "sworn," say, "well and truly to inquire of and assess the plaintiff's damages in said cause," &c.; in which case their verdict will be, "We the jury assess the plaintiff's damages (or debt and damages, as the case may be,) at ——." Jury trial and judgment thereon.

If a jury try the cause, on an issue between the parties, and the action be in debt, the jury, if they find for the plaintiff, are Verdict in debt.

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to find the principal sum due, and interest thereon, if there be any interest, and add such interest to the principal; and their verdict may be substantially as follows: "We the jury find for the plaintiff the sum of —— dollars for his debt and damages."

Other actions

If the action be in any form except debt, detinue, or replevin, the verdict of the jury may be substantially as follows: "We the jury find for the plaintiff, and assess his damages at the sum of —— dollars." If in any such case interest be recoverable, it is to be included in the sum thus found as damages by the jury.

Balance in case of a set-off.

If a set-off be established in favor of the defendant, and a balance be found by the jury to be due to him, the verdict may be substantially as follows: "We the jury find for the defendant, and assess the balance in his favor at the sum of —— dollars."

General verdict for defendant.

A verdict in favor of the defendant, except where a balance is found for him in case of a set-off, may be as follows: "We the jury find for the defendant."

No. 9. *Judgment in replevin for plaintiff.*

Judgment in replevin for plaintiff.

"It is considered that for the wrongful taking and unlawful detaining, (or the unlawful detention, as the case may be,) complained of by the plaintiff, the said plaintiff recover of the defendant the sum of —— for his damages sustained by reason thereof, with the costs of suit taxed at ——."

For defendant.

If the defendant succeed in his defence, before the justice or jury, there will be a general verdict and judgment in his favor, "That the defendant go hence without day and recover of the plaintiff his costs," &c., as in forms Nos. 5 and 7.

For defendant, with award of return.

Or if the defendant shall have pleaded a plea entitling him to a judgment for the return of the property replevied, to-wit, a plea of property in himself, or any person other than the plaintiff, at the time of suing out the writ of replevin; and such plea be found true, the judgment will read, "It is therefore considered that the defendant have return of the goods and chattels replevied, (or such part thereof as may be adjudged to him,) to-wit, (here decribe them,) agreeably to law; and that he recover of the plaintiff his costs," &c., as above.

No. 10. *Execution against goods and chattels.*

Execution of fi. fa.

State of Indiana, —— county, sct.

To any constable of —— township, greeting:

Whereas, A— B— obtained judgment against C— D—, before —— ——, a justice of the peace for said township, for ——, with interest thereon from the —— day of —— till paid, together with costs of suit taxed at —— on the —— day of ——.

You are therefore commanded, (adding here in case of its being a second execution on the same judgment, "as before commanded,") that of the goods and chattels of the said C—

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D—, in your county, (except such as are by law exempted from execution,) you cause to be made the said debt and damages, (or damages, as the case may be,) interest, and costs, and accruing costs, by levy and sale thereof, returning the overplus, if any, to the said C— D—: Hereof make legal service and due return within one hundred and twenty days from this date.

Given under my hand and seal this —— day of ——, 18—.

J— H—, [SEAL.]
Justice of the peace.

No. 11. *Execution against the body.*

Execution of ca. sa.

State of Indiana, —— county, sct.

To any constable of —— township, greeting:

Recite the judgment (as in No. 10, and say): "You are therefore commanded that you take the body of the said C— D— to satisfy the said A— B— the debt and damages (or damages), interest, and costs, and accruing costs, and commit the said C— D— to the common jail of said county, there to be detained until such debt and damages (or damages), interest, and costs be fully paid and satisfied, or he be otherwise discharged according to law: Hereof make legal service and due return.

Given under my hand and seal this —— day of ——, 18—.

J— H— [SEAL.]
Justice of the peace.

An execution of this kind shall be endorsed on the back by the justice, "Issued on affidavit."

No. 12. *Domestic attachment.*

Writ of domestic attachment.

State of Indiana, —— county, sct:

To any constable of —— township, greeting:

Whereas, A— B— hath made oath before me, J— H—, a justice of the peace of said township, that C— D—, late of said county, is secretly leaving this state, (or has left this state) with intent to defraud his creditors, (or to avoid the service of civil process,) or keeps himself concealed so that process cannot be served upon him, with intent to delay (or defraud) his creditors, (as the affidavit may be,) and that the said C— D— is indebted to the said A— B— in the sum of ———, (here describe the debt or demand, as in the affidavit.) You are therefore hereby commanded forthwith to attach the goods, chattels, rights, credits, moneys, and effects of the said C— D— in your county, to be kept and disposed of according to law: (In case of an affidavit against a garnishee, say,) And whereas, the said A— B— has also made oath that E— F— of said county is indebted to the said C— D—, (or has property, money, effects, or credits, of the said C— D— in his hands, as the case may be.) You are therefore further commanded to summon said E— F— to appear before me the said J— H—, a justice as aforesaid, at my office, on the —— day of ——, at —— o'clock in the ——noon, then and there to answer under

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PART III.

oath, touching such indebtedness (or the property, money, effects, or credits,) of the said C— D—, within his possession or knowledge. Hereof make legal service and due return.

Given under my hand and seal the —— day of ——, 18—.

J——— H———, [SEAL.]
Justice of the peace.

A separate summons, whenever necessary, may issue against any garnishee.

No. 13. *Affidavit for a landlord's warrant.*

Affidavit to obtain a landlord's warrant.

State of Indiana, —— county, sct:

A— B—, being duly sworn, says, that C— D— is justly indebted to him the said A— B— (or to E— F—, for whom the said A— B— is agent or attorney,) in the sum of ——, being —— years (or months, or weeks) rent of (here describe the premises,) situated in —— township in said county; payable in (here state whether in money or other valuable articles or services,) on the —— day of ——; and that he the said affiant has reason to believe, and does verily believe, there will be danger of losing the said debt or rent thus due and in arrear, by proceeding to collect the same in the usual way of collecting ordinary debts, and further saith not.

(Signed) A. B.

Subscribed and sworn to before me, a justice of the peace of said township (or city) this —— day of ——— 18—.

J. H., justice of the peace.

No. 14. *Landlord's warrant.*

Warrant.

State of Indiana, —— county, sct:

To any constable of —— township, greeting:

You are hereby commanded to distrain the goods and chattels of C— D— in or upon (here describe the house or premises,) situated in the township and county aforesaid, for the sum of ———, being ——— years (or months, or weeks,) rent, (or part thereof, as may be) due and payable in money, (or other valuable articles or services,) on the —— day of ——, to A— B— for the same, as by affidavit of ——— appears: and proceed thereon for the recovery of said rent, as the law directs.

Given under my hand and seal this —— day of ——, 18—.

J——— H———, [SEAL.]
Justice of the peace.

No. 15. *Writ of replevin.*

Writ of replevin.

State of Indiana, —— county, sct:

To any constable of —— township, greeting:

You are hereby commanded that you take into your custody, wherever they may be found in said county, the following goods and chattels, to-wit: (here describe them, with their

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value, as in the affidavit,) and them safely keep, until A— B—, plaintiff herein, shall satisfy and secure you by sufficient pledges, that he will well and truly, without delay, prosecute to effect this writ of replevin against C— D—, defendant herein, and such other persons as may become his co-defendants, and return such goods and chattels, if return shall be adjudged to the person from whom they may be taken, and pay such damages and costs as may be awarded against him, if the defendant succeed in his defence herein; and that on being so satisfied and secured, you deliver such goods and chattels to the said A— B—, and summon the said C— D—, and if the said A— B— shall require you so to do, the person from whose possession you may take such goods and chattels, to appear before me, J— H—, a justice of the peace of said township, at my office therein, on the —— day of ——, at — o'clock in the ——noon, to answer the said A— B— of and concerning the wrongful taking and unlawful detaining (or of the unlawful detention, as the case may be,) of said goods and chattels, to his damage —— dollars, as is said; and of this writ make due service and return. ARTICLE 15.

Given under my hand and seal this —— day of ——, 18—.

J—— H——, [SEAL.]

Justice of the peace.

No. 16. *Scire facias on transcript.*

State of Indiana, —— county, sct: Scire facias on transcript.

To any constable of —— township, greeting:

Whereas, on the —— day of ——, A— B— obtained judgment before C— D—, a justice of the —— township of ——, county and state aforesaid, for the sum of ——, debt, (or damages) with interest thereon from the —— day of —— till paid, and costs of suit, taxed at ——; costs accrued since, ——; whole costs ——; making in all the sum of ——; as by transcript thereof duly certified appears: And whereas, such judgment is still in full force, unreversed and unsatisfied, and execution thereof yet remains to be made, as is on the part of the said A— B— alleged: You are therefore hereby commanded that you summon the said —— to appear before me, J— H—, a justice of the peace of said —— township, at my office therein, on the —— day of ——, at —— o'clock in the ——noon, to show cause, if any he have or can, why execution shall not issue against him for the debt and damages, (or damages,) interest and costs aforesaid. Hereof make due service and return.

Given under my hand and seal this —— day of ——, 18—.

J—— H——, [SEAL.]

Justice of the peace.

A scire facias against special bail, or a justice or constable, for not paying over money collected, may be substantially the same as above, making the necessary variations in the recital, and saying "show cause why the said A— B— ought not to Sci. fa. *vs.* special bail, justice or constable.

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PART III. have judgment and execution against the said —— for said sum of ——, (adding, in case of a justice or constable) with ten per centum damages thereon, with interest and costs," &c.

No. 17. *Judgment on scire facias.*

Judgment on sci. fa. Come the parties, (or comes the plaintiff, &c. as in the above forms,) and the cause being fully heard and inspected, &c., it is considered that said A— B— have execution (or judgment and execution) against said E— F— for ——, the debt and damages (or damages) aforesaid, with interest thereon from the —— day of —— till paid, and ——, the costs aforesaid, making the sum of ——, exclusive of interest; together with his costs by him about his suit herein expended, taxed at ——. (Add, in case of a justice or constable, "together with ten per centum damages thereon," &c.)

No. 18. *Dedimus to take testimony.*

Dedimus. The state of Indiana, to A— B—, esquire, a —— of the county of ——, in the state of ——, greeting:

Reposing confidence in your prudence and fidelity, you are hereby authorized and empowered, at such time and place as may be appointed, and of which you may be duly notified, diligently to examine, under oath to be by you first administered, C— D—, (and others,) witnesses in a cause now pending before J— H—, esquire, a justice of the peace in and for the county of ——, in the state of Indiana, wherein E— F— is plaintiff, and K— L— is defendant, in a plea of ——, as well on the part of the —— as on the part of the ——; on such questions and interrogatories as may be asked of them; and on such examinations being reduced to writing, and signed by them and yourself, and duly attested, you cause to be sealed up, together with this writ, and transmitted, with all convenient speed, to the said J— H—, in the township of ——, in the county and state last aforesaid. Witness, J— H—, a justice of the peace of said county of ——, in the State of Indiana aforesaid, this —— day of —— A. D., 18—.

J——— H———, [SEAL.]
Justice of the peace.

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CHAPTER 48.

OF SPECIAL WRITS AND PROCEEDINGS.

ARTICLE 1. Of the writ of habeas corpus.
ARTICLE 2. Of informations in the nature of a quo warranto.
ARTICLE 3. Of the writs of mandamus and prohibition.
ARTICLE 4. Of scire facias.
ARTICLE 5. Of the writ of ad quod damnum.

ARTICLE I.

Of the writ of habeas corpus.

SECTION
1. Who may have a writ of habeas corpus.
2. Petition: its requisites.
3. By what judge or court the writ may be granted.
4. To be granted without delay.
5. To whom directed.
6. To whom writ shall be delivered.
7. Same subject.
8. To whom in case person to whom writ is directed cannot be found.
9. Refusal to obey writ, attachment may issue.
10. Return: what it shall contain.
11. Officer, &c. to produce party held in custody, &c.
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13. Same subject.
14. Court or judge to proceed to a hearing, &c.
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16. Court or judge to hear allegations and proofs in a summary way.
17. Shall have power to compel attendance of witnesses.
18. Shall discharge person, if no cause be shown for his detention.
19. If party be in custody by virtue of U. States process, &c., he shall be remanded.
20. Cases in which party may be discharged out of custody on process.
21. Person in custody, &c., on justice's warrant, not discharged for defect, &c., of warrant.
22. Party charged with a criminal offence, court or judge may send for and examine witnesses, &c.: may discharge party, commit, or let him to bail.
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23. Habeas corpus to let to bail.
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27. Party, how detained pending the writ.
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34. Cases in which a warrant may issue to bring person in custody before the court or judge.
35. Such warrant may also be against the person who holds the other in custody, &c.
36. How warrant executed.
37. Return, may be traversed, &c.
38. Decision thereon.
39. When writ, &c. may be served on Sunday.
40. Clerk shall issue writ, warrant, &c.: time of their return.
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42. Action against a judge, officer, &c., for refusing or disobeying writ.
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44. Or assisting therein.
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PART III.

Who may have a writ of habeas corpus.

SECTION 1. Evey person unlawfully committed, detained, confined, or restrained of his liberty for any criminal or supposed criminal matter, or under any pretence whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.*

Petition—its requisites.

SECT. 2. Application for such writ shall be made by petition signed either by the party for whose relief it is intended, or by some person in his behalf; and shall specify,

1. That the person in whose behalf the writ is applied for is imprisoned or restrained in his liberty; the officer or person by whom he is so confined or restrained; and the place where; naming all the parties, if they are known, or describing them, if they are not known;

2. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the party;

3. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists;

4. The petition must be verified by the oath or affirmation of the party making the application.

By what court or judge the writ may be granted.

SECT. 3. Such writ of habeas corpus may be granted by the supreme or circuit court in term time, or by any judge thereof at any time, whether in term or vacation; and it may also be granted by a judge of the probate court, whenever the same is necessary to the exercise of the jurisdiction of such court, to protect the rights and liberty of infants and insane persons, or when the party is in custody by virtue of any writ, order, or process issued out of such court.

To be granted without delay.

SECT. 4. Any court or judge empowered to grant any writ applied for under this article, to whom such petition may be presented, if it appear that the writ ought to issue, shall grant the same without delay.

To whom directed.

SECT. 5. Such writ shall be directed to the officer or party having such person in custody or under restraint, commanding him to have the body of such person so imprisoned or detained, as it is alleged by petition, before the court or judge, as the case may be, at such time as the court or judge shall direct, specifying in such writ the place where the petition will be heard, to do and receive what shall be then and there considered concerning such person, together with the time and cause of his detention, and have then there such writ.

To whom writ shall be delivered.

SECT. 6. If such writ be directed to the sheriff or other ministerial officer of the court out of which such writ is issued, it shall be delivered by the clerk to such officer without delay, as other writs are delivered for service.

Same subject.

SECT. 7. If such writ be directed to any officer or person other than are specified in the last preceding section, the same shall be delivered to the sheriff, or his deputy, or the coroner, as the case may require, and shall be by him served upon such officer or person by delivering the same to him without delay.

*See 2 Kent's Comm. 26.

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ARTICLE 1.

Same. in case person to whom it is directed cannot be found.

SECT. 8. If the officer or person to whom such writ is directed cannot be found, or shall refuse admittance to the officer or person serving or delivering such writ, the same may be served or delivered by leaving it at the residence of the officer or person to whom it is directed, or by affixing the same on some conspicuous place on the outside, either of his dwelling house or of the place where the party is confined or under restraint.

Refusal to obey writ, attachment may issue, &c.

SECT. 9. If the officer or person to whom such writ is directed refuse, after due service as aforesaid, to obey the same it shall be the duty of the court or judge, upon affidavit, to issue an attachment against such person, directed to the sheriff or coroner, as the case may require, commanding him forthwith to apprehend such person, and bring him immediately before such court or judge; and upon being so brought, he shall be committed to the jail of the county, until he make due return to such writ or be otherwise legally discharged.

Return—what it shall contain.

SECT. 10. The officer or person upon whom such writ shall be duly served, shall state in his return, plainly and unequivocally,

1. Whether he have or have not the party in his custody or under his power or restraint;

2. If he have the party in his custody or power or under his restraint, he shall state the authority and the cause of such imprisonment or restraint, setting forth the same at large;

3. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited to the court or judge, on the hearing of such return;

4. If the officer, or person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but such officer or person has transferred such custody or restraint to another, the return shall state particularly to whom, at what time and place, for what cause, and by what authority, such transfer took place;

5. The return must be signed by the person making the same, and, except where such person shall be a sworn public officer, and shall make such return in his official capacity, it shall be verified by his oath or affirmation.

Officer, &c. to produce party held in his custody, &c.

SECT. 11. If the writ of habeas corpus be served, the person or officer to whom the same is directed shall also bring the body of the party in his custody or under his restraint, according to the command of the writ, except in the cases specified in the next two sections.

Last section qualified.

SECT. 12. Whenever, from sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot, without danger, be brought before the court or judge, the officer or person in whose custody or power he is, may state that fact in his return to the writ, verifying the same by affidavit.

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Same subject.

SECT. 13. If the court or judge be satisfied of the truth of such allegation of sickness or infirmity, and the return to the writ be otherwise sufficient, such court or judge may proceed to decide on such return, and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

Court or judge to proceed to a hearing, &c.

SECT. 14. The court or judge before whom a writ of habeas corpus shall be returned, shall, immediately after the return thereof, proceed to hear and examine the return, and such other matters as may be properly submitted to their hearing and consideration.

Party may traverse return &c.

SECT. 15. The party brought before the court or judge, on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact, to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge; which allegations, except in cases of commitments on a criminal charge by a justice of the peace, shall be on oath or affirmation; and the petition, return, pleadings, and allegations of the parties may be amended, in form or substance, without any delay or continuance of the hearing.

Court or judge to hear, &c. in a summary way, &c.

SECT. 16. Such court or judge shall thereupon proceed in a summary way, to hear such allegations and proofs as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require.

Shall have power to require attendance of witnesses, &c.

SECT. 17. Such court or judge shall have full power and authority to require and compel the attendance of witnesses, by process of subpœna and attachment; and to do all other acts and things necessary to a fair and full hearing and determination of the case.

Shall discharge person, if no cause be shown for holding him in custody.

SECT. 18. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such court or judge shall discharge such party from the custody or restraint under which he is held.

If party be in custody by virtue of U. States process, &c. he shall be remanded.

SECT. 19. It shall be the duty of such court or judge, if the time during which such party may be legally detained in custody has not expired, to remand such party, if it shall appear that he is detained in custody,

1. By virtue of process issued by any court or judge of the United States, in a case where such judge or court has exclusive jurisdiction; or,

2. By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; or,

3. For any contempt specially or plainly charged in the commitment, by some court, officer, or body, having authority to commit for the contempt so charged:

Provisions of this section qualified.

And no court or judge, on the return of any habeas corpus, shall have power to inquire into the legality of any process, judgment, decree, or execution, above specified in this section;

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except that an order of commitment for any alleged contempt, or upon proceedings as for a contempt, to enforce the rights or remedies of any party, or any attachment, or other process issued upon any such order, shall not be deemed a judgment, decree, or execution, within the meaning of this section; nor shall this section apply to cases of persons committed on a criminal charge, by a warrant of commitment, issued by a justice of the peace.

Cases in which person may be discharged out of custody on process.

SECT. 20. If it appear on the return to the writ of habeas corpus, that the prisoner is in custody by virtue of process from any court of this state, or judge or officer thereof, such prisoner may be discharged in any one of the following cases, subject, however, to the restrictions of the last preceding section:

1. Where such person is arrested on mesne process, and has a right by law to controvert the proceedings or allegations of the plaintiff, in order to hold such person to bail; *

2. Where the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum, or person;

3. Where the imprisonment was at first lawful, yet by some act, omission, or event, which has taken place afterwards, the party has become entitled to be discharged;

4. Where the process is defective in some matter of substance required by law, rendering such process void;

5. Where the process, though proper in form, has been issued in a case not allowed by law;

6. Where the person having the custody of the prisoner is not the person empowered by law to detain him;

7. Where the process is not authorized by any judgment, order, or decree, of any court, nor by any provision of law;

8. Where a party has been committed on a criminal charge, without reasonable or probable cause.

Person in custody, &c. on justice's warrant not discharged for defect, &c. of warrant.

SECT. 21. If any person be committed to prison, or be in custody of any officer, on any criminal charge, by virtue of any warrant or commitment of a justice of the peace, such person shall not be discharged from such imprisonment or custody, by reason of any defect or informality of such warrant or commitment, if such warrant or commitment allege substantially against such person a criminal offence, of which such justice had jurisdiction.

Party charged with a criminal offence, court or judge may send for and examine witnesses, &c.

SECT. 22. If it shall appear to the court or judge, by affidavit, or upon the hearing of the matter, or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to such court or judge, that the party is guilty of a criminal offence, or ought not to be discharged, such court or judge, although the charge be defectively or unsubstantially set forth in such process or warrant of commitment shall cause the complainant, or other necessary witnesses to be subpœnaed to attend at such time as shall be ordered, to testify before such court or judge;

May discharge party, commit, or let him to bail.

* See ante, page 674, section 21.

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PART III.

and upon the examination, he shall discharge such prisoner, let him to bail, if the offence be bailable, or recommit him to custody, as may be just and legal.

Habeas corpus to let to bail.

SECT. 23. Whenever any person may be imprisoned or detained in custody on any criminal charge, for want of bail, such person shall be entitled to a writ of habeas corpus, for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

Judge may take recognizance, &c.

SECT. 24. Any judge, before whom any person who has been committed on a criminal charge, may be brought on a writ of habeas corpus, if the same be bailable, may take a recognizance from such person, as in other cases, and shall file the same in the proper court without delay.

Cases in which court shall remand party.

SECT. 25. If any party, brought before the court or judge on the return of the writ, be not entitled to his discharge, and be not bailed, where bail is allowable, such court or judge shall remand him to custody, or place him under the restraint from which he was taken, if the person under whose custody or restraint he was be legally entitled thereto.

Same subject.

SECT. 26. In cases where any party is held under illegal restraint or custody, and any other person is entitled to the restraint or custody of such party, such judge or court may order such party to be committed to the restraint or custody of such person as by law is entitled thereto.

Party, how detained pending the writ.

SECT. 27. Until judgment be given on the return, the court or judge before whom any party may be brought on such writ, may commit him or her to the custody of the sheriff of the county, or place him or her in such care or under such custody as his or her age or circumstances may require.

Notice to person interested in process, etc., by which party is held in custody.

SECT. 28. When it appears from the return of any such writ or otherwise, that the party named therein is in custody on any process under which any person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge until it shall appear that the party so interested, his agent or attorney, if in the county, shall have had reasonable notice of the time and place at which such writ shall have been made returnable.

Notice to complainant in case of a criminal charge.

SECT. 29. When it shall appear from the return, that such party is detained on a criminal charge, such court or judge shall make no order for the discharge of such party, except to let him to bail, if he be committed for want of bail, until reasonable notice of the time and place of hearing such return shall have been given to the person, his agent or attorney, on whose complaint such party is held in custody.

How notice served.

SECT. 30. The notice required in the last two preceding sections, shall be served by delivering a copy thereof to the party entitled to such notice, or by leaving such copy at his usual place of residence, and may be served as soon as the writ is issued.

Habeas corpus not disobeyed

SECT. 31. No writ of habeas corpus shall be disobeyed for any defect of form, if it sufficiently appear therefrom in whose

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custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the court or judge before whom he is to be brought.

for defect in form, etc.

SECT. 32. No sheriff or other officer shall be liable to any civil action for obeying any writ of habeas corpus or order of discharge made thereon; and if any action shall be brought thereon against such sheriff or officer for suffering any person committed to his custody to go at large pursuant to such writ or order, he may give the same, together with the provisions of this article, and all other matters of defence, in evidence under the general issue.

Sheriff, etc. obeying writ not liable to an action—may plead general issue and give special matter in evidence.

SECT. 33. No person who has been discharged by the order of the court or judge upon a habeas corpus, issued pursuant to the provisions of this article, shall be again imprisoned, restrained, or kept in custody for the same cause; but it shall not be deemed the same cause,

Cases in which person discharged shall not be again held in custody. Exceptions.

1. If he shall have been discharged from custody on a criminal charge and be afterwards committed for the same offence by legal order or process; or

2. If after a discharge for defect of proof, or for any defect in the process, warrant, or commitment in a criminal case, the prisoner be again arrested on sufficient proof and committed by legal process for the same offence; or

3. If, in any civil suit, the party shall have been discharged for any illegality in the judgment or process, and is afterwards imprisoned by legal process for the same cause of action; or

4. If, in any civil suit, he shall have been discharged from commitment on mesne process, and shall be afterwards committed on execution in the same cause, or on mesne process in another suit for the same cause of action, after the first suit shall have been dismissed or discontinued, or the plaintiff nonsuited.

SECT. 34. Whenever it shall appear by satisfactory proof, by affidavit to any court or judge authorized by law to grant a writ of habeas corpus, that any one is illegally held in custody, confinement, or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of such court or judge before whom the application is made, or will suffer some irreparable injury before compliance with a writ of habeas corpus can be enforced, such court or judge may cause a warrant to be issued, reciting the facts and directed to any sheriff, coroner, or constable of the county, commanding such officer to take such person thus held in custody, confinement, or restraint, and forthwith bring him or her before such court or judge, to be dealt with according to law.

Case in which a warrant may issue to bring person in custody before the court or judge.

SECT. 35. Such court or judge may also, if the same be deemed necessary, insert in such warrant a command for the apprehension of the person charged with such illegal detention or restraint.

Such warrant may be also against the party, etc.

SECT. 36. The officer to whom any such warrant is delivered, shall execute the same by bringing the person or persons

How executed.

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therein named, before the court or judge who may have directed the issuing of such warrant.

Return.

SECT. 37. The person alleged to have such party under illegal confinement or restraint, may make return to such warrant as in case of a writ of habeas corpus; and the same may be traversed, and like pleadings, allegations, proofs, and trial shall be thereon had, as upon a return to a writ of habeas corpus.

May be traversed, etc.

Decision thereon.

SECT. 38. If such party be held under illegal restraint or custody, he or she shall be discharged; and if not, he or she shall be restored to the care or custody of the person entitled thereto, or left at liberty as the case may require.

When writ, etc may be served on Sunday.

SECT. 39. Any writ or process authorized by this article, may be issued and served, in cases of emergency, on the first day of the week, commonly called Sunday.

Clerk shall issue writs, etc.

SECT. 40. All writs, warrants, process, and subpœnas, authorized by the provisions of this article, shall be issued by the clerk of the court, and, except subpœnas, sealed with the seal

Time of return

of such court; and shall be served and returned forthwith, unless the court or judge shall specify a particular time for any such return.

Where returned.

SECT. 41. All such writs and process, when issued by order of a judge, shall be returned before him at the county seat, and shall be there heard and determined.

Action against a judge, officer, etc., for refusing or disobeying writ.

SECT. 42. If any judge, after a proper application is made, shall refuse to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ may be directed shall refuse obedience to the command thereof, he shall forfeit and pay to the person aggrieved a sum not exceeding five hundred dollars, to be recovered by an action of debt in any court of record having cognizance thereof.

Penalty for evading service of writ, etc.

SECT. 43. Any one having in his custody or under his restraint or power, any person for whose relief a writ of habeas corpus shall have been duly issued, pursuant to the provisions of this article, who, with intent to elude the service of such writ or to avoid the effect thereof, shall transfer such person to the custody of another, or shall place him or her under the power or control of another, or shall conceal or change the place of his or her confinement or restraint, or shall remove him or her without the jurisdiction of such court or judge, shall be deemed guilty of a misdemeanor.

For assisting therein.

SECT. 44. Every person who shall knowingly aid or assist in the commission of any offence specified in the last preceding section, shall be deemed guilty of a misdemeanor.

Punishment in case of conviction.

SECT. 45. Every person convicted of any offence under the provisions of the last two preceding sections, shall be fined in any sum not exceeding one thousand dollars; to which may be added imprisonment in the county jail not exceeding ninety days.

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ARTICLE II.

Of informations in the nature of a quo warranto.

SECTION
46. On whose information and in what cases writ may issue: 1. Persons unlawfully holding office. 2. After forfeiture of office. 3. Against persons not incorporated assuming corporate powers.
47. Summons.
48. Writ against any one for usurping office, &c. may specify the person entitled to such office.
49. Judgment in such case.
50. If such person be adjudged entitled, he may, on taking oath of office, &c., enter on duties of such office, &c.: may demand books, &c.
51. If books, &c. refused, party offending may be fined, &c.
52. May be committed until he deliver books, &c.
53. Party recovering office may proceed against the person ousted, for damages.
54. Notice to adverse party.
55. Defence may be pleaded; judgment, if for plaintiff.

SECTION
56. Cases in which a writ of inquiry may be awarded.
57. Issues, how tried.
58. Proceedings against corporate bodies; duty of prosecuting attorney.
59. Proceedings on application to file such information.
60. Filing of an information against a corporation; summons.
61. Case in which a summons shall not be necessary.
62. Summons, how served.
63. Case of several persons claiming the same office or franchise.
64. Pleadings and issues, how tried.—Continuances.
65. Cases in which judgment of ouster may be rendered.
66. Costs allowed in favor of relator.
67. Costs, how taxed and collected; a receiver may be appointed in case of a corporation; his duties.
68. Proceedings to recover property escheated or forfeited to the state.

SECT. 46. An information, in the nature of a quo warranto, may be filed either in term or vacation by the prosecuting attorney of any circuit, on his own relation, or on the relation of any private party, without leave of the court in any of the following cases: On whose relation, and in what cases, writ may issue.

1. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this state, or any office in any corporation created by the authority of this state: Person unlawfully holding office, &c.

2. Whenever any public officer, civil or military, shall have done or suffered any act which by the provisions of law, shall work a forfeiture of his office: Forfeiture of office.

3. Where any association or number of persons shall act within this state as a corporation, without being legally incorporated. Against persons not incorporated.

SECT. 47. Whenever any such information shall be filed, a writ of summons shall be issued thereon, which shall be served and returned in like manner as in personal actions. Summons.

SECT. 48. Whenever any such information shall be filed against any person for usurping any office, the prosecuting at- Against any one for usurping an office,

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writ may specify person entitled to such office.

torney, in addition to the matters now required to be set forth in the information, may also set forth therein the name of the person rightfully entitled to such office, with an averment of his right thereto.

Judgment in such case.

SECT. 49. In every such case judgment shall be rendered upon the right of the defendant, and also upon the right of the party so averred to be entitled, or only upon the right of the defendant, as justice may require.

Person adjudged entitled, upon taking oath, &c., may enter upon the duties of such office, &c.

SECT. 50. If judgment be rendered on the right of the person so averred to be entitled, and such judgment be in his favor, he shall be entitled, after taking the oath of office and executing any official bond which may be required by law, to take upon himself the execution of the duties of such office; and it shall be his duty, immediately thereafter, to demand of the defendant in such information all the books and papers in the custody of such defendant, or within his power, belonging to the office from which he shall have been ousted.

May demand books, &c.

If books, &c. refused, party offending may be fined, &c.

SECT. 51. If such defendant shall refuse or neglect to deliver over any such books and papers, pursuant to such demand, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars.

May be committed until he deliver books, &c.

SECT. 52. In the case specified in the last preceding section, the court may make it a part of their judgment, if such books and papers have not been delivered at the time of such judgment, that such defendant stand committed to the jail of the county until such delivery be made, or until he be otherwise discharged by the court.

Party recovering may proceed against person ousted, for damages.

SECT. 53. If judgment on any such information shall be in favor of the person so averred to be entitled, upon his right, he may, at any time within one year after the rendition of such judgment, make and file a suggestion that he has sustained damages to some amount, by reason of such usurpation, intrusion into, or unlawful exercising or holding of the office by the defendant, from which such defendant has been evicted, specifying therein the nature of such damages.

Notice to adverse party.

SECT. 54. Such suggestion shall be filed and entered as a continuation of the proceedings on such information, and the defendant shall be notified thereof in writing, at least ten days before the hearing and trial thereof.

Defence may be pleaded.

SECT. 55. The defendant may plead generally that the person filing such suggestion has not sustained any damages by reason of the premises in his suggestion alleged; and if on the trial of such issue it shall appear that the defendant has received any fees or emoluments belonging to such office, or the plaintiff has otherwise sustained any damages by such usurpation, such plaintiff shall have judgment for such equitable sum as he may be entitled to recover from such defendant.

Judgment for plaintiff.

Cases in which a writ of inquiry

SECT. 56. If no issue in fact be joined in any such suggestion, or if judgment be rendered against the defendant by default,

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on demurrer or otherwise, a writ of inquiry may be awarded as in other cases of the assessment of damages.

Writ of inquiry may be awarded.

SECT. 57. All issues of fact or of law that shall be joined between the parties shall be determined as in personal actions; and the party in whose favor judgment shall be rendered, may have execution for any damages and costs, or either, that may be adjudged to him, in the same manner as in personal actions.

Issues, how tried.

Execution.

SECT. 58. An information in the nature of a quo warranto may be filed by the prosecuting attorney, upon his own relation, on leave granted, against any corporate body, whenever such corporation shall have,

Proceedings against corporate bodies.

1. Offended against any of the provisions of the act or acts creating, altering, or renewing such corporation; or,

2. Violated the provisions of any law, by which such corporation shall have forfeited its charter by misuser; or,

3. Forfeited its privileges and franchises by non-user; or,

4. Done or omitted any acts which amount to a surrender of its corporate rights, privileges, and franchises; or,

5. Whenever it shall exercise any franchise or privilege not conferred upon it by law;*

And it shall be the duty of the proper prosecuting attorney to file such information in the office of the clerk of the circuit court for the county where the principal office or place of business of such corporation may be, in every instance in which he shall have good reason to believe that such information can be established by proof.

Duty of prosecuting attorney.

SECT. 59. Leave to file such information against such corporation may be granted by the circuit court in term time; and such court, may, in their discretion, direct notice of such application to be given to the corporation, or its officers, previous to granting such leave, and may hear such corporation in opposition thereto.

Proceedings on application for leave to file such information.

SECT. 60. Upon such leave being granted and endorsed on the information, under the hand of the clerk of the court, the prosecuting attorney may forthwith file the same; and thereupon a writ of summons may issue against such corporation, to be directed to the sheriff or other proper officer of the county, commanding him to summon such corporation to appear in the said court to answer the said information.

Filing of information against a corporation.

Summons.

SECT. 61. But where such corporation shall appear by counsel, pursuant to the notice above authorized to be given, and shall be heard in opposition to the granting of such leave, the court, on granting leave, may also direct a rule to be entered, requiring the defendants to appear and plead to such information on or before the first day of the next term of such court; and in such case it shall not be necessary to issue a writ of summons.

Case in which a summons shall not be necessary.

* *State Bank* v. *The State*, 1 Blackf. 267.—See ante, page 587.

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Summons, how served.

SECT. 62. Whenever a summons shall be issued against any such incorporation, such summons shall be served and returned as in personal actions against any such corporation.*

Case of several persons claiming the same office or franchise.

SECT. 63. When several persons claim to be entitled to the same office or franchise, one information may be filed against all such persons, in order to try their respective rights to such office or franchise.

Pleadings and issues, how tried. Continuances.

SECT. 64. The parties may plead, and the issues shall be made up, and issues of law and of fact may be tried, and continuances be granted, and further time be allowed to plead, as in personal actions.

Cases in which judgment of ouster may be rendered.

SECT. 65. Whenever any person or persons, against whom any such information shall be exhibited, shall be found or adjudged guilty of any usurpation of or intrusion into, or unlawfully holding or exercising any office, civil or military, or any franchise within this state, or any office in any corporation created by the authority of this state, or whenever any public officer, civil or military, thus charged, shall be found or adjudged guilty of having done or suffered any act which, by the provisions of law, shall work a forfeiture of his office, or when any association or number of persons shall be found or adjudged guilty of having acted as a corporation, without having been legally incorporated, it shall be lawful for said court to give judgment of ouster against such person or persons, whether they be natural persons, or a corporation, or an association of persons claiming to act under corporate powers, and altogether to exclude such person or persons from such office, franchise, privileges, or corporate rights, and in cases of corporations, that the same be dissolved.

Costs allowed, in favor of relator.

SECT. 66. If judgment be rendered upon any such information against any person or persons charged with usurping, intruding into, or unlawfully holding or exercising any public office as aforesaid, or any franchise within this state, or any office in any corporation created by the authority of this state, or against any person whose office is forfeited, the court trying the same and rendering such judgment, shall adjudge costs therein, in favor of the relator or relators in such information: but costs shall not be awarded against any relator in any such proceeding.

Costs, how taxed and collected.

SECT. 67. If judgment be rendered against any corporation, or against any persons claiming to be a corporation, upon any such information, the court shall adjudge costs therein as in other cases, and may cause them to be collected by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of any such corporation; and whenever any such judgment shall be rendered, the court, as a court of chancery, shall have power to restrain such corporation, to appoint a receiver of its property and effects, and to take an account and make distribution thereof

A receiver may be appointed in case of a corporation. His duties.

* See ante, page 671, section 2.

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among its creditors; and it shall be the duty of the prosecuting attorney, immediately after the rendition of any such judgment, to institute proceedings for that purpose on the chancery side of said court.* ARTICLE 3.

Proceedings to recover property escheated or forfeited.

SECT. 68. Whenever by the provisions of law, any property, real or personal, shall escheat or be forfeited to the state, for the use of the state, its legal title shall be deemed to be in the state from the time of such escheat or forfeiture; and an information may be filed by the proper prosecuting attorney in the circuit court of the county having jurisdiction, for the recovery of such property, alleging the grounds on which such recovery is claimed; upon which the like proceedings and judgment shall be had, if the information be to recover personal property, as in actions of trover or replevin; and if it be to recover real property, as in the action of ejectment.

ARTICLE III.

Of the writs of mandamus and prohibition.

SECTION
69. Jurisdiction in case of mandamus.
70. When writ to issue out of the supreme court.
71. When out of a circuit court.
72. How such writ shall issue; when returnable.
73. Return.
74. Pleadings.
75. Damages.
76. Recovery to be a bar, &c.
77. Power of court to enlarge time for a return, to plead, &c.
78. Fine, &c. in case of refusing to obey a peremptory mandamus; such fine a bar to a criminal prosecution.
79. Prohibition, when to issue out of the supreme or circuit court.
80. To issue on affidavit; return of writ.
81. Command of the writ.
82. How served; return, how enforced.
83. Party named in the writ may adopt return of the court to which the writ is directed; adverse party may plead, &c. thereto: issues.
84. Proceedings, if return not thus adopted.
85. Judgment.
86. Prohibition absolute, &c.

Jurisdiction in case of mandamus.

SECT. 69. A writ of mandamus may issue out of the supreme court, or any of the circuit courts of this state, subject to the provisions hereinafter prescribed.

When writ to issue out of the supreme court.

SECT. 70. Such writ shall not issue out of the supreme court, unless to a court of record of inferior jurisdiction, or to some tribunal or ministerial officer, in cases where the granting of such writ is necessary and proper to the due exercise of the jurisdiction and powers of such supreme court.†

* See ante, page 587, sections 19—23.

† When the judgment of a circuit court is reversed, and the proceedings up to a certain point are set aside at the costs of the defendant in error, and the cause is remanded for further proceedings; if the circuit court refuse to render a judgment for the costs according to the mandate, the supreme court will grant a rule to show cause why a mandamus should not issue. *Jared* v. *Hill*, 1 Blackf. 155.

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Out of the circuit court.

SECT. 71. In all other cases where proceedings by such writ are proper and necessary, such writ shall issue out of the circuit court having jurisdiction.

How such writ shall issue.

SECT. 72. Writs of mandamus shall issue upon affidavits by motion; and shall be tested, in the name of the clerk, and sealed with the seal of the court, and shall be returnable at such reasonable time as the court shall direct.

When returnable.

Return.

SECT. 73. When any writ of mandamus shall be issued out of any circuit court in this state, the person, body, or tribunal to whom the same shall be directed and delivered, shall make return to the first writ of mandamus; and for neglect so to do, shall be proceeded against as for a contempt.

Pleadings.

SECT. 74. Whenever a return shall be made to any such writ, the person prosecuting such writ may demur or plead to all or any of the material facts contained in said return; to which the person making such return shall reply, take issue, or demur; and the like proceedings, trial, and judgment shall be had therein for the determination thereof, as might have been had, if the person prosecuting said writ had brought his action on the case for a false return.

Damages.

SECT. 75. In case a verdict shall be found for the person suing out such writ, or if judgment be given for him on demurrer, or by default, or for want of a replication or any other pleading, he shall recover damages and costs in like manner as he might have done in such action on the case as aforesaid; and a peremptory mandamus shall be granted to him without delay.

Recovery to be a bar, etc.

SECT. 76. A recovery of damages, by virtue of this article, against any party who shall have made a return to a writ of mandamus, shall be a bar to any other action against the same party for the making of such return.

Power of court to enlarge time for a return, to plead, etc.

SECT. 77. The court shall have the same power to enlarge the time of making a return, and pleading to such writ, and for filing any subsequent pleadings, and to continue such cause, as in personal actions.

Fine, etc., in case of refusing to obey a peremptory mandamus.

SECT. 78. Whenever a peremptory mandamus shall be directed to any public officer, body, or board, commanding him or them to perform any public duty specially enjoined upon them by any provisions of law, if it shall appear to the court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding two hundred and fifty dollars, upon every such officer or member of such body or board; and such fine, when collected shall be paid over for the use of the seminary fund; and the payment of such fine shall be a bar to any criminal prosecution for any penalty incurred by such officer or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.

Such fine a bar to a criminal prosecution.

Prohibition, when to issue out of the supreme or circuit court.

SECT. 79. Writs of prohibition may issue from the supreme court, or any circuit court of this state; but such writ shall issue from the supreme court only when the same is essential to such

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court in the exercise of its jurisdiction and powers, and no other court can take cognizance of the subject matter thereof. ARTICLE 3.

SECT. 80. Such writs shall be applied for upon affidavits, by motion, and shall be issuable and returnable in like manner as writs of mandamus. To issue on affidavit. How returnable.

SECT. 81. The writ shall command the court and party to whom it shall be directed to desist and refrain from any further proceedings in the suit or matter therein specified, until the return of the writ and the further order of the court granting the writ thereon; and upon such return, to show cause why they shall not be absolutely restrained from any further proceedings in such suit or matter. Command of the writ.

SECT. 82. Such writ shall be served upon the court or tribunal and party to whom it shall be directed, in the same manner as a writ of mandamus; and a return shall, in like manner, be made thereto by such court, which may be enforced by attachment. How served and return enforced.

SECT. 83. If the party to whom such writ of prohibition shall have been directed shall, by instrument in writing signed by him and annexed to such return, adopt the return made by such court or tribunal, and rely upon the matters therein contained, as sufficient cause why such court should not be restrained, as mentioned in the said writ, such party shall thenceforth be deemed the defendant in such matter; and the person prosecuting such writ may reply, take issue, or demur to the matters so relied upon by such defendant; and the like proceedings shall be had for the trial of issues of law or fact joined between the parties, and for the rendering of judgment thereon as in personal actions. Party named in the writ may adopt return of the court. Adverse party may plead thereto, etc.

SECT. 84. If the party to whom such writ of prohibition shall have been directed, shall not adopt such return as above provided, the party prosecuting such writ shall bring on the argument of such return, as upon a rule to show cause; and he may, by his own affidavit and other proofs, controvert the matters set forth in such return. Proceedings if return not thus adopted.

SECT. 85. The court, after hearing the proofs and allegations of the parties, shall render judgment, either that a prohibition absolute, restraining the said court and party from proceeding in such suit or matter, do issue; or a writ of consultation, authorizing the court and party to proceed in the suit or matter in question. Judgment.

SECT. 86. If the party to whom such first writ of prohibition shall be directed, shall adopt the return of the court thereto as above provided, and judgment shall be rendered for the party prosecuting such writ, a prohibition absolute shall be issued; if judgment be given against such party, a writ of consultation shall be awarded, as above provided. Prohibition absolute, etc.

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ARTICLE IV.

Of scire facias.

SECTION
87. Sci. fa. to revive judgment after three years.
88. After a year and a day affidavit required.
89. Certain cases in which writ may issue: when limited to a year, &c.
90. As to successors, trustees, guardians, &c.
91. How issued, tested, and returned, &c.
92. Returned "not found," effect thereof: issued to another county.
93. Sci fa. may be in place of a declaration.
94. Executors &c. may make profert of letters in sci. fa.
95. Stay of execution, and appraisement of property, in cases of forfeited recognizances.
96. Proceedings in case of forfeited recognizances before a justice of the peace.
97. Proceedings thereon in circuit court.
98. Sci. fa. to charge lands, defendant may plead in abatement that he has no lands, &c.

Sci. fa. to revive judgment after 3 years.

SECT. 87. It shall not be necessary to revive a judgment by scire facias, where an execution shall not have been issued upon such judgment, until the expiration of three years from and after the rendition of such judgment. *

After a year and a day, affidavit required.

SECT. 88. But if no execution have been issued for a year and a day, an execution shall not issue until the plaintiff, his agent or attorney, shall have filed with the officer issuing execution, an affidavit that such judgment has not been paid or satisfied, and that there is not, as he verily believes, any good reason why such execution should not be issued.

Cases in which writ may issue.

SECT. 89. A writ of scire facias may issue in the cases not otherwise provided for by law to revive a judgment against the personal representatives of any deceased defendant, or in favor of the personal representatives of a deceased plaintiff, or when the situation of either party is changed by marriage, or to continue a suit by or against the representatives of either party who shall have died in the progress of any suit; but writs of scire facias against the personal representatives of any party to an action, shall be issued within one year after the cause for issuing the same shall arise. †

When limited to a year, &c.

As to successors, trustees, guardians, &c.

SECT. 90. Such writ may also be issued, and the suit revived for or against the successor of any guardian, trustee, or public officer in whose name or on whose relation any suit may have been pending, in like manner as provided in the last section, and shall be subject to all the provisions of law respecting the revival of suits for or against the representatives of a deceased party.

* If the original judgment be reversed, that upon scire facias to revive cannot be supported. *Mills* v. *Conner*, 1 Blackf. 7.

† A scire facias against an executrix, to revive a judgment recovered against her testator, must contain a suggestion of the death of the judgment-debtor, and show the defendant's appointment as executrix. *Walker* v. *Hood*, 5 Blackf. 266.

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ARTICLE 4.

How issue tested, returned, &c.

SECT. 91. Writs of scire facias may be issued, tested, and returned, in like manner as a writ of summons, and may also be served as a summons, without the aid of two freeholders, whether the defendant be or be not found in the bailiwick of the officer to whom the writ may be directed.

Returned "not found," effect thereof, &c.

SECT. 92. If such writ be returned "not found," a second writ may issue; and if such second writ be also returned "not found," the same proceedings may be had on such scire facias as if it had been returned "served;" or such writ may be issued to any county in the state, but in such case, no further proceedings shall be had thereon, unless such writ be returned "served on the defendant." *

Issued to another county.

Sci. fa. may be in place of a declaration.

SECT. 93. No declaration shall be required to be filed to the scire facias, and the scire facias may be amended, pleaded to, and proceeded on, as in case of a declaration. †

Executors, &c. may make profert of letters in sci. fa.

SECT. 94. Where executors or administrators are plaintiffs in any writ of scire facias, they may make profert of their letters testamentary, or of administration, in the scire facias, in the same manner as now practised in the declaration; and the defendant shall plead to such writ as to a declaration.

Stay of execution, and appraisement of property, in cases of forfeited recognizances.

SECT. 95. Where judgment of execution is rendered on any scire facias on a forfeited recognizance in a criminal case, the defendants shall be entitled, from the time of such rendition, to all the provisions of the laws of this state allowing a stay of execution, on the entering of replevin bail, and also requiring the property of execution-defendants to be appraised before the sale thereof under execution.

Proceedings in case of a forfeited recognizance before justice of the peace.

SECT. 96. Where a recognizance is taken for the appearance of any person, to answer a criminal charge before a justice of the peace, and such recognizance shall be forfeited, such justice shall enter judgment of forfeiture thereon, and immediately file a transcript of such recognizance and judgment, in the clerk's office of the circuit court of his county.

Proceeding in circuit court.

SECT. 97. Such clerk shall forthwith enter such transcript on the order book, and a scire facias shall be issued, and judgment for execution be awarded thereon, as if such forfeiture had been taken in such circuit court.

Sci. fa. to charge lands, defendant may plead in abatement that he has no lands, &c.

SECT. 98. It shall be lawful for any defendant to any scire facias to charge real estate, to plead in abatement of the scire facias that said defendant had no real estate in said county, at the time of issuing said scire facias. ‡

* See *Kearns* v. *The State*, 3 Blackf. 334—*Walker* v. *Hood*, 5 Blackf. 266.

† See *Lasselle* v. *Godfroy*, 1 Blackf. 297.

‡ See ante, page 888, section 155.

A scire facias to have execution on the transcript of a justice's judgment filed in the circuit court. *Held*, that error in the judgment was no defence. *Held*, also, that oyer of the transcript was not demandable. *The Comm. Bank of Kentucky* v. *Dunn*, 4 Blackf. 513.

Scire facias to have execution on a justice's transcript against lands. *Held*, 1. That the scire facias need not aver that the justice was informed that the defendant had lands. 2. That it is no objection to the scire facias that the execution of the justice is stated to have been directed to a special constable. 3. That an averment that the judg-

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ARTICLE V.

Of the writ of ad quod damnum.

SECTION
99. Application for such writ by the owner of the bank and bed of the river, wishing to build a mill, etc.
100. Writ issued to sheriff by order of the court—command thereof—notice to the other party.
101. How the sheriff shall charge the jury.
102. Inquest to be returned by the sheriff.
103. Owner of lands on both sides of the river may have such writ to examine what lands will be overflowed etc.
104. Or any person having erected a mill etc.; may have such writ.
105. Jury in such case, how summoned, and notice given.
106. Inquest.
107. When application shall be dismissed.
108. Any person injured by overflow, etc., may prosecute such writ.
109 Inquest in such case and effect thereof.
110. Person affected by any inquest provided for by this article, may appear and traverse the same—may plead in bar, etc.
111. Proceedings therein.
112. Court may render judgment for damages, etc.
113. Cases in which leave to build a dam etc., shall not be given—when leave may be given.
114. Case in which applicant, upon paying damages, etc., shall become seized of one acre of land—time therefor limited—how his right affected if mill destroyed.
115. Recovery of damages shall bar an action.
116. Last section qualified.
117. Proceedings in case of infants—guardian ad litem.
118. Guardian shall appear for infants.
119. Case in which owner of mill may enter on lands of another to secure banks, etc.
120 Last section not to affect right of the owner of the land to an action.
121. Penalty for injuring embankment, etc.

Application for such writ by the owner of the bank and bed of the river wishing to erect a mill etc.

SECT. 99. If any person owning lands on one side of a water course and the bed thereof, either by legal or equitable title, desires to erect a dam across such water course for the purpose of building a water grist, saw, carding, or fulling mill, or of erecting any machinery on such land, to be propelled by water, and does not own the land on the opposite side of such water course, against or on which he would abut his dam, he may make application for a writ of ad quod damnum, to the circuit court of the county where such lands lie, specifying in such application the ground and object thereof.

ment is in force is not necessary: if the judgment be paid or reversed, the defendant must show it. *Wiley* v. *Logan*, 5 Blackf. 11.

A scire facias on behalf of a firm, to have execution against real estate on the judgment of a justice of the peace, should not issue in the name of the firm, but in the names of the persons composing it. *Barrackman* v. *Worthington*, 5 Blackf. 213.

The scire facias should show that the justice had issued in an execution on the judgment against the defendant's goods, and that the same had been returned *nulla bona*. Ibid.

A scire facias to have execution against real estate on a judgment of a justice of the peace, must show that a transcript not only of the judgment, but of the proceedings upon the judgment, had been filed in the circuit court. *Codling* v. *Deal*, 6 Blackf. 80.

It is no defence to a scire facias to have execution on a justice's transcript, that the defendant had and still has sufficient goods, &c. Nor is it any defence in such case, that the judgment is replevied, and that the surety had and still has sufficient goods, &c. *White* v. *Elkin*, 6 Blackf. 123.

The issue on the plea of nul tiel record must be tried by the court, and not by a jury. Ibid.

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ARTICLE 5.

Writ to issue to the sheriff by order of court—command thereof. Notice to other party.

SECT. 100. Such court may thereupon order the clerk to issue such writ, to be directed to the sheriff, commanding him to summon and impannel twelve fit persons to meet on the land so proposed for the abutment, on a certain day to be named by the court and inserted in said writ, of which meeting ten days' previous notice to the proprietor of such land shall be given if to be found in the county; and if not, then to his agent, if any he have in such county; or if there be no such agent, then to be advertised at the door of the court house of the proper county for two terms of such court.

How the sheriff shall charge the jury.

SECT. 101. The jury so summoned and impannelled, after being sworn, shall be charged by the sheriff, impartially and to the best of their skill and judgment,

1. To view the land proposed for an abutment, and to locate and circumscribe, by metes and bounds, one acre thereof, having due regard therein to the interest of both parties, and to appraise the same according to its true value;

2. To examine the lands above and below, the property of others, which may probably be overflowed or injured, and say what damage it will be to the several proprietors, naming them, and whether the mansion house of any such proprietor or proprietors, or the offices, curtilages, or gardens thereunto immediately belonging, will be overflowed or injured;

3. To inquire whether and in what degree, fish of passage or ordinary navigation will be obstructed; and whether, in their opinion, the health of the neighborhood will be annoyed by the stagnation of the water; and,

4. Whether and by what means any such obstruction, annoyance, or injury can be prevented.*

Inquest to be returned by the sheriff.

SECT. 102. The inquest so made and signed by said jurors, together with the writ, shall be forthwith returned by the sheriff to the office of the clerk of such court; and said sheriff shall thereupon immediately give notice thereof in writing to the several persons, proprietors or tenants of the lands so located or found liable to damage or injury, if such persons be found within the county where the lands so to be condemned, overflowed, or injured lie, and if not, then to their agents, if any they have, to show cause why the party so applying should not have leave to build his said mill dam.

Person owning land on both sides of the river, may have such writ to examine what lands will be overflowed, etc.

SECT. 103. If the person proposing to build any such mill and dam shall own the land on both sides of the water course, application may be made, in like manner, to the circuit court of the county where the mill house will stand, for a writ to examine as aforesaid, what lands may be overflowed or injured, and to make the same examination, assessment of damages, and report, so far as the same is necessary, as in the case first mentioned in this article; which writ shall be directed, executed and

*The inquest in case of a writ of ad quod damnum, must distinctly state whether, in the opinion of the jury, the health of the neighborhood will be annoyed by the stagnation of the water which the contemplated dam may occasion. *Gherkey* v. *Haines*, 4 Blackf. 159.

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returned and notice given to the proprietors or their agents as prescribed in the former case.

Or any person having erected a mill, etc., may have such writ.

SECT 104. When any person shall have erected a mill and mill dam on his own lands, whereby the water of any river, creek, or spring of another shall be overflowed or affected, or his lands or tenements, or any appurtenances thereof, shall be injured, the person who erected such mill and mill dam, may prosecute a writ of ad quod damnum, as provided in the first, second, third, and fourth sections of this article, so far as the same are applicable.

Jury, how summoned and notice given.

SECT. 105. Such jury shall be summoned, and such inquest conducted and returned, and notice given, as on an application in the case of erecting a new mill.

Inquest.

SECT. 106. Such jury, if they find such mill to be of public utility, shall examine and take into consideration the damages in the premises, and shall assess such equitable amount therefor as the party injured or affected may have sustained, and will sustain, by the erection and continuance of such mill dam.

When application shall be dismissed.

SECT. 107. In case of any such application by any person, after having erected his mill dam, no damages shall be allowed, and the application shall be dismissed, unless the case be such, that leave would have been given to build a mill, if such application had been filed before the erection of the mill dam.

Any person injured by overflow, &c. may prosecute such writ.

SECT. 108. Where any person may have built a mill or other dam, whereby the water of any river, creek, run, or spring may be rendered stagnant, or any lands shall be overflowed or injured thereby, it may be lawful for any person interested therein, or who may be damaged by the stagnation or overflowing of said water, or otherwise, to obtain a writ of ad quod damnum, in the same manner as is directed in the case of persons wishing to build a new mill, having first given the owner of such mill ten days' previous notice of the application for such writ.*

Inquest, and effect thereof.

SECT. 109. The jury so summoned shall ascertain the damages which such applicant has sustained and may sustain, in consequence of the erection and continuance of the said mill dam, and shall inquire whether the said mill is of public utility; and after the inquest of such jury shall have been returned, and it has been confirmed by the court, such owner or owners of the said mill shall pay to such applicant the sum assessed by the jury aforesaid; and upon payment of said assessment, if the said mill was found by the jury to be of public utility, the said owner or owners shall be exonerated from all damages to such applicant.

Person affected by inquest may appear and traverse the same.

SECT. 110. Any person interested in or affected by any inquest provided for in this article, may appear and traverse any material fact therein stated, or he may plead or show any valid

* If a mill dam be erected without authority, a party whose land is overflowed in consequence of the dam, (his right to complain having been established at law,) may file a bill in chancery to prevent a continuance of the injury. *Smith* v. *Olmstead*, 5 Blackf. 37.

The party may resort to an action on the case, notwithstanding the provisions of this section. See *Summy* v. *Mulford*, 5 Blackf 202.

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matter in bar of the right of the applicant to have the benefit of such writ; and issues of law and of fact may be made up and tried, and the court may adjudge costs therein, as in actions at common law. ARTICLE 5. May plead in bar, &c.

SECT. 111. The court may permit amendments of the proceedings, and may set aside, for sufficient cause, any such inquest, and award another writ, upon the payment of all costs by the applicant, or may dismiss the proceedings, or the court may ratify and confirm such inquest. Proceedings therein.

SECT. 112. The court may render judgment and issue execution for any amount of damages assessed by such jury against any such person owning or wishing to build any mill or mill dam, as specified in this article, in favor of the party entitled to such damages, if desired by the party thus entitled. Court may render judgment for damages.

SECT. 113. If, in the case of an application provided for in the first and fifth sections of this article, it shall appear on such inquest or other evidence to the court that the mill or appurtenances thereto belonging, or the mansion house of any proprietor, or curtilage, or garden, thereunto immediately belonging, will be or has been overflowed or injured, or the health of the neighborhood annoyed, they shall not give leave to build such mill and dam; but if none of those injuries have accrued, nor will likely accrue, they shall then proceed to adjudge whether, under all the circumstances, it be reasonable that such leave be given, or not given. Cases in which leave to build a dam, &c. shall not be given. When leave may be given.

SECT. 114. If the party applying shall obtain leave to build the said mill and dam, he shall, upon paying, respectively, to the several persons entitled, the value of the acre so located, and the damages which the jurors may assess on the inquest aforesaid, become seized in fee simple of the said acre of land; but if he shall not, within one year after the decision of the court, begin to build the said mill, and finish the same within three years, and afterwards continue it in good repair for public use, or in case the said mill and dam, or either of them, be destroyed, if he shall not begin to rebuild the same, within one year after such destruction, and finish the erection thereof within three years thereafter, the said acre of land shall revert to the former proprietor, and his heirs, unless at the time of such destruction the owner of such mill be a feme covert, an infant, imprisoned, or of unsound mind, in which case, the length of time above specified shall be allowed after such disability shall be removed. When applicant, upon paying damages, shall become seized of one acre of land, &c. Time therefor limited. How right affected if mill destroyed.

SECT. 115. Any assessment of damages, in pursuance of the provisions of this article, when the same shall be fully paid and satisfied, after confirmation of such assessment by the court, shall bar a recovery for any damages or injury sustained previous or subsequent to such inquest, in any and every action at law.* Recovery of damages shall bar action.

* Unless the damages assessed under a writ of ad quod damnum be paid, the assessment will not affect the remedy of the injured party for an injury which was not foreseen or estimated by the jury. *Smith* v. *Olmstead*, 5 Blackf. 37.

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Last section qualified.

SECT. 116. But such inquest of the said jurors, and affirmation thereof by the court, shall not bar any action which any person would have had for any subsequent damage or injury, if this law had never been passed, other than for such damages or injuries as were actually foreseen and decided upon by the jury.

Proceedings in case of infants.

SECT. 117. When any application is made, as provided in the first or fifth section of this article, and any of the proprietors to be affected thereby shall be infants, such proceedings and inquisition shall be conducted and returned, in all respects, as if such infants were of full age; but the court shall not proceed further in such application until some discreet person, not of kin to the applicant, shall be appointed by the court as guardian ad litem for such infants.

Guardian ad litem.

Guardian shall appear for infants.

SECT. 118. Such guardian ad litem shall appear and defend for such infants; but no confession, admission, or default of such guardian shall prejudice or affect the rights of such infants.

Case in which owner of mill may enter on lands of another to secure banks, &c.

SECT. 119. Where the water, backed up by any mill dam belonging to any mill or machinery, is about to break through or over the banks of the stream, or to wash a channel so as to turn the water of such stream, or any part thereof, out of its bed or ordinary channel, whereby such mill or machinery will be injured or affected, the owner or occupier of such mill or machinery, if he do not own such bank or banks, or the lands lying contiguous thereto, may, if necessary, enter thereon, and erect and keep in repair such embankments, fortifications, and other works as shall be requisite to prevent such water from breaking through or over the bank or banks of such stream, or washing a channel as aforesaid, such owner or occupier committing thereon no unnecessary waste or damage.

Last section not to affect the right of the owner of the land to an action.

SECT. 120. Nothing contained in the last preceding section shall be construed to bar the owner of such bank or banks, or land lying contiguous thereto, from recovering the amount of any injury which he may have actually and in fact sustained by the erection or repair of such embankment, fortification or other works.

Penalty for injuring embankment, &c.

SECT. 121. If any person shall injure, destroy, or remove any such embankment, fortification, or other works, the owner or occupier of such mill or machinery may recover of such person all damages which he may sustain by reason of such injury, destruction, or removal.

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ARTICLE 1.

CHAPTER 49.

OF THE MODE OF CHANGING THE VENUE IN CIVIL CAUSES.

SECTION
1. Who may petition for a change of venue: who may grant such change
2. What the petition shall contain; order of the judge, &c. to the clerk.
3. Clerk receiving papers to receipt therefor.
4. Powers, &c. of the court to which the change is taken.
5. Fees, &c., how and when paid.
6. Clerk employing person to carry papers, &c., responsible for his fidelity.
7. Petition, &c., where deposited.
8. Counties to which change shall not be granted.
9. Application in vacation.
10. Ten days notice to the adverse party.
11. Party failing in his application shall pay adverse party five dollars.

Who may petition for a change of venue.

SECTION 1. In all civil suits, at common law and in chancery, cognizable in any of the circuit courts of this state, now pending, or which may hereafter be pending, when either of the parties shall conceive that he will not receive a fair trial in the circuit court where such suit is pending,

1. Owing to the presiding judge having been engaged as counsel in the cause prior to his appointment as judge; or,

2. That one or both of the associate judges of the court in which the suit is pending, is of kin to either of the parties in any of the following degrees, to-wit: as father, son, brother, uncle, first cousin, or brother-in-law; or,

3. Where one or both of the associate judges are interested, or the presiding judge may be of kin to one of the parties in the manner aforesaid; or,

4. Because of the undue influence of his adversary, or of the odium which attends the said party, or attaches to his legal cause of action or defence, or on account of local prejudices;

Who may grant such change.

It shall be lawful for the party so suspecting that he will not receive a fair and impartial trial in the court then entertaining said suit, owing to the said causes, or any of them, at any time, to petition the court, or the president judge of the circuit, or the associate judges of the county where the suit is pending, for a change of venue.

What the petition shall contain.

SECT. 2. Such petition shall distinctly set forth the cause or causes why such belief is entertained, and be supported by the affidavit of the petitioner or petitioners, or some one of them; whereupon the court in term, or the judge or judges aforesaid in vacation, under his hand or their hands, may award a change of venue, and order the clerk of the court before whom the suit is then pending, forthwith to transmit the papers and a transcript of the proceedings in said suit, by some meet person, employed by such clerk, to such court having jurisdiction in similar cases, as the said court, judge, or judges may direct.

Order to the clerk.

Clerk receiving papers, &c. to receipt therefor.

SECT. 3. The clerk of such court shall receive such papers and transcripts, and file the same, giving a receipt therefor, and shall docket the said suit in order with other causes.

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Powers, &c. of the court to which the change is taken.

SECT. 4. The court to which such papers are sent shall be, and is hereby vested with full power, authority, and jurisdiction, to award subpœnas for witnesses, to enforce their attendance, to grant commissions for taking depositions, to hear and determine such suit, to award executions, and do all matters and things relative thereto, which the court from which the cause was removed, might or could legally have done.*

Fees, &c., and how and when paid.

SECT. 5. The expenses attending the removal shall be paid by the party praying the same; and the person who shall be entrusted to convey said papers to the clerk of the circuit court to which they shall be sent, shall receive the sum of eight cents for each mile which he must necessarily travel in going to and returning from said clerk's office; which sum shall be paid into the hands of the clerk of the court where the cause originated, before the papers shall be delivered out of his office.

Clerk employing person to carry papers, &c., responsible for his fidelity.

SECT. 6. The clerk shall be answerable for the fidelity of the person whom he may employ to carry said papers from his office, as above provided; but he shall not be answerable for accidents not arising from neglect.

Petition, &c., where deposited.

SECT. 7. The venue shall in no case be changed, unless the party who prays the same shall deposite the order of the court, or judge or judges granting such change, together with the petition aforesaid, (which shall be carefully preserved by the clerk of the court,) and also the necessary expenses attending the removal, with the clerk having custody of the papers, at least thirty days before the term of the court to which such suit shall be sent for trial.

Counties to which change shall not be granted.

SECT. 8. No change of venue shall be granted so as to have the cause sent to either of the counties where the parties may reside; nor shall there be more than one removal of the same cause.

Applications in vacation.

SECT. 9. No change of venue shall be granted so as to take the cause out of the circuit, unless on account of some valid objection to the president judge of the circuit in which the cause was instituted.

Ten days' notice to the adverse party.

SECT. 10. No application for a change of venue shall be heard in vacation until the party applying for such change shall produce to the judge or judges to whom such application is made, satisfactory proof that the adverse party has had ten days' previous notice in writing of the time and place at which such application is intended to be made, or in case of his absence out of the county or state, to his agent or attorney at law; which notice shall be certified by the judge granting such change, to the clerk where the suit was commenced.†

Party failing in his application shall pay the adverse party five dollars.

SECT. 11. If any person wishing to obtain a change of venue shall have given notice to the opposite party, as is provided by this chapter, and shall fail to attend on the day and at the place appointed, or shall attend and not show sufficient cause for such change, he shall pay to the opposite party five dollars, to be

* See *Bosley* v. *Farquar*, 2 Blackf. 61.—*Burnham* v. *Hatfield*, 5 Blackf. 21.
† See *Rubottom* v. *Shank*, 5 Blackf. 122.

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taxed by the clerk, and collected as other costs; and in order the better to carry this section into effect, the judge or judges before whom the application is made for a change of venue, shall file the petition and other papers in the clerk's office, with the decision thereon. ARTICLE 1.

CHAPTER 50.

OF THE MODE OF SUMMONING AND EMPANNELLING GRAND AND PETIT JURORS.

SECTION

1. The number of grand and petit jurors to be selected by the board of county commissioners.
2. Qualifications of jurors.
3. Names equal to the number of grand and petit jurors for a year, to be placed in a box.
4. Clerk of the circuit court to draw out grand and petit jurors for the year.
5. Clerk shall write names of jurors on separate panels.
6. Jurors to serve to end of term in certain cases.
7. When jurors may be selected at other than the May session of the board
8. Venire.

SECTION

9. Penalty for juror failing to attend.
10. In case of failure to select at regular term, jurors may be selected at subsequent term.
11. Who may be jurors in certain cases.
12. Jurors may be directed to be summoned for a particular day of the term.
13. Venire returnable to such day.
14. If no grand or petit jury, how jury selected.
15. If panel exhausted, etc., sheriff may select.
16. Liabilities, etc of such jurors.
17. Six challenges, when allowed.

SECTION 1. Eighteen grand jurors shall be selected by the board of county commissioners of each county, to attend on the first day of each term of the circuit court, and twelve petit jurors for each and every week of each term of such court for one year succeeding such selection. Eighteen grand and twelve petit jurors shall be selected, etc.

SECT. 2. Such jurors shall be good reputable freeholders or householders, resident of the county in which they are selected and taxable therein. Qualifications.

SECT. 3. Such board of county commissioners, at their May session annually, shall cause a number of names of qualified persons, equal to the aggregate number of grand and petit jurors required for the several terms of the circuit court of such county for the ensuing year, to be written on separate pieces of paper and put into a a box provided for that purpose. Names of grand and petit jurors for a year to be placed in a box

SECT. 4. The clerk of the circuit court, in the presence of such board, shall draw from said box, eighteen names for grand jurors, and twelve names for petit jurors of the first term of such year, if the term of said court do not extend by law to a longer time than one week; if the term extend to two weeks then twelve names shall be drawn, marked, and designated as petit jurors for the first week, and twelve names for the second Clerk of circuit court to draw out grand and petit jurors for a year.

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week of such term; and the board shall proceed in like manner, when any term extends to a longer time than two weeks, to cause twelve names to be drawn, marked, and designated for each such additional week; and the grand and petit jurors for each succeeding term of the year, shall be drawn as above prescribed, from said box.*

Clerk shall write names of jurors on separate panels.

SECT. 5. The clerk shall write the names of such grand and petit jurors on separate panels, distinguishing for which term of the court the grand jurors, and for which week of each term the petit jurors, have been selected; which panels he shall record in the order book of such circuit court.†

Jurors to serve to end of term in certain cases

SECT. 6. If the term of any circuit court shall have been extended beyond the time prescribed by law, when the grand and petit jurors for such term were selected, such jurors shall serve to the end of the term, if such court shall deem it necessary, for the transaction of the business thereof.

When jurors may be selected at another than the May session of the board.

SECT. 7. When the first term of the court next after the May session of the board of county commissioners may happen within thirty days after such session, the grand and petit jurors shall be selected for the year commencing with the term of the court next following the term thus happening within said period of thirty days.

Venire.

SECT. 8. The clerk of the circuit court shall, at least thirty days previous to the sitting of the court, make out two writs containing severally the panels of the grand and petit jurors, selected as aforesaid for said term, under the seal of the said circuit court, directed to the sheriff of the county, commanding him to summon said jurors to appear at such term, at the court house in said county, to attend to their duties as such jurors.

Penalty for juror failing to attend.

SECT. 9. Each and every person summoned as a grand or petit juror under the provisions of this chapter, who, after having received ten days' notice by the sheriff, shall neglect or refuse to attend as aforesaid, shall be fined in any sum not exceeding three dollars, in the discretion of the court, on the motion of the prosecuting attorney; notice having first been given by scire facias or attachment, to the offending party at least ten days previous to the making of such motion.

In case of failure to select at regular term jurors may be selected at subsequent term.

SECT. 10. Whenever the board of county commissioners shall omit to make the selection of grand and petit jurors at their May session in any year, as above provided, it is hereby made

* If the board doing county business select from the list of taxable persons the names of the petit jurors, according to its discretion, instead of causing their names to be drawn from a box by the clerk, according to the statute, out of the whole number selected—it is a good cause of challenge to the array. *Jones* v. *The State*, 3 Blackf. 37.

In the course of drawing the names of jurors from the box for the circuit court, it was discovered that some of the persons whose names had been drawn, were not freeholders nor householders. The names of such unqualified persons were then rejected, the other names which had been drawn, were again put into the box, and, in the place of the rejected names, others were also put into the box. *Held*, that this proceeding was not objectionable. *Lindley* v. *Kendall*, 4 Blackf. 189.

† If the names of the petit jurors have not been recorded by the clerk, conformably to the statute, it is good cause of challenge to the array. *Mitchell* v. *Likens*, 3 Blackf. 258.—*Mitchell* v. *Denbo*, 3 Blackf. 259.

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their duty to make such selection at their next, or at any succeeding term; and such board, and all other persons concerned shall be governed by the same rules, and be subject to the like restrictions and penalties, as are hereinbefore provided.

Who may be jurors in certain cases.

SECT. 11. Nothing in this chapter shall be so construed as to prevent persons over the age of sixty years from serving as grand and petit jurors, nor to prevent the board of county commissioners in any new county from selecting grand and petit jurors from the citizens of said county, at their discretion; nor, in any case, to prevent jurors from being obtained, as at common law, to make up any deficiency in the regular panel.

Jurors, when obtained as at common law.

Jurors may be directed to be summoned for a particular day of the term.

SECT. 12. The president judge of the circuit, or in his absence the associate judges, during the session of the circuit court, in each county in this state, may make an order upon the order book, directing the time at which the petit jury shall be summoned, to attend the said court during the next succeeding term; and in making said order, the judge or judges shall have reference to the probable amount of business, and shall direct the jury to be summoned at such time during the term as will most facilitate the same and lessen the expense to the respective counties.

Venire returnable to such day.

SECT. 13. It shall be the duty of the several clerks of the respective circuit courts to make the venire for petit jurors returnable at such time as the said judges shall direct, whenever any order is made, as provided in the last preceding section.

If no grand or petit jury, how jury selected.

SECT. 14. Whenever by reason of a challenge to the array of grand or petit jurors, or from any cause whatsoever, there shall be no such jury at any term of the court, a panel of grand or petit jurors, if necessary, shall be selected by the sheriff or coroner, or by elizors, as the case may require, from citizens of the county possessing the qualifications of jurors.

If panel exhausted, &c., sheriff may select.

SECT. 15. Whenever at the term of any court, by reason of absence, or from being empannelled on the trial of any cause or causes, the regular panel of jurors for such week of the term shall be exhausted, and a jury is required for the trial of any cause, such jury may be summoned by the sheriff or other proper officer, from citizens of the county possessing the qualifications of jurors.

Liabilities, &c. of such jurors.

SECT. 16. Every such jury, when summoned, shall be subject to all the liabilities, duties, privileges, compensation, and penalties as jurors belonging to the regular panel.

Six challenges, when allowed.

SECT. 17. Whenever a petit jury is summoned as provided in the last three preceding sections, each party, instead of three, shall be entitled to six peremptory challenges.

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CHAPTER 51.

OF SPECIAL REMEDIES BY SURETIES AGAINST THEIR PRINCIPALS.

SECTION
1. Surety, by notice in writing, may require bond, &c. to be put in suit.
2. Creditor in such case shall commence an action within a reasonable time.
3. Surety may have his joint obligor, &c. summoned, when suit has been brought by filing a statement that he is surety, &c.
4. Proceedings to try whether he executed such contract, &c. as surety.
5. Court shall make an order that execution be not levied on property of the surety, until property of principal exhausted.
6. Suit on note, &c. not to be delayed by such proceedings: such proceedings may be had while suit is pending, or after judgment.
7. Provisions extended to heirs, executors, &c., of surety: this article limited.
8. Remedy of surety when he has paid judgment.
9. Remedy of surety against his co-surety.
10. Surety may not confess judgment, &c., to the prejudice of his principal.
11. Remedy of special bail by motion, &c.
12. Ten days' notice of motion: notice by publication.

Surety, by notice in writing, may require bond, &c., to be put in suit.

SECTION 1. When any person bound as surety by bond, bill, note, or otherwise, for the payment of money, or performance of any contract, shall apprehend that the principal debtor for whom he is bound is likely to become insolvent, or to remove from this state, without previously satisfying or discharging such debt, duty, demand, or obligation, so that it will become impossible or difficult for such surety, after paying, satisfying, or discharging such debt, duty, or obligation, to recover the value thereof from such principal debtor, it shall be lawful for such surety, if an action have accrued on any such contract, demand, or liability, as aforesaid, to require, by notice in writing, the creditor or obligee forthwith to put the bond, bill, note, or other contract by which he is bound as aforesaid, in suit.*

Creditor in such case shall commence an action within a reasonable time, &c.

SECT. 2. Such creditor shall, within reasonable time, commence an action, and proceed with due diligence to judgment and execution thereon; and if such creditor or obligee shall fail or neglect to proceed as aforesaid, the said surety shall be discharged from the performance of said contract, demand, or liability.†

Surety may have his joint obligor, &c. summoned

SECT. 3. Whenever any action shall be brought against two or more individuals on any note, bond, bill, contract, or obligation, any one or more of whom shall have executed the same as

* The mere delay of a creditor in not proceeding against the principal debtor, is no defence to a suit against the surety. *Naylor* v. *Moody*, 3 Blackf. 92—*Harter* v. *Moore*, 5 Blackf. 367.

A prolongation of the time of payment given by a creditor to his debtor, without a new contract founded on a valid consideration, though given without the consent of the surety of the debtor, will not exonerate the surety from his liability. *Coman* v. *The State*, 4 Blackf. 241—*Barker* v. *McClure*, 2 Blackf. 14—*Braman* v. *Howk*, 1 Blackf. 392.

† If the party fail to sue within a reasonable time after such notice, the surety will be discharged, whether the principal be insolvent or not. *Reid* v. *Cox*, 5 Blackf. 313.

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surety for the other, it shall be lawful for the person who may have executed the same as such surety, to file his statement in writing, in the court in which such suit is pending, setting forth that he executed such note, bond, bill, contract, or obligation, as surety for such other person; and upon filing such statement, the clerk of such court shall issue a summons to such joint obligor, payer, or contractor, requiring him to appear at the next term of said court, and answer the matter set forth in said statement.

when suit has been brought, filing a statement that he is surety, &c.

SECT. 4. At the term of said court at which said party shall be summoned to answer, said summons having been served upon him ten days before the commencement of said term, if he shall deny the matter alleged in said statement, such parties shall proceed to make up an issue as in other cases, and thereupon the court shall empannel a jury to try such issue, if the amount in controversy be over twenty dollars; and the court or jury, after hearing the testimony which may be introduced by the parties, shall determine whether such person or persons so filing said statement executed the said note, bond, bill, contract, or obligation, as surety for the other obligor or obligors, payer or contractor.

Proceedings to try whether he executed such contract, &c. as surety.

SECT. 5. If the court or jury trying such case shall determine that the person or persons filing such statement executed such note, bond, bill, contract, or obligation, as such surety, the court shall thereupon make an order directing the sheriff of the proper county to levy any execution which may be issued upon the judgment rendered upon such note, bill, bond, contract, or obligation, first upon the property of the principal or principals in said judgment, and exhaust the same before he shall levy upon the property of such surety, a memorandum of which order shall be endorsed by the clerk of such court, on any execution issued on such judgment; which order it shall be and is hereby made the duty of the sheriff into whose hands any such execution may be placed, to obey.

Court shall make an order that execution be not levied on the property of the surety until property of principal exhausted.

SECT. 6. The suit upon any such note, bill, bond, contract, or obligation, shall not be delayed or postponed by reason of the proceedings of such surety hereby authorized; but such suit shall progress without reference to the proceedings instituted by such surety; and the proceedings herein authorized in favor of such surety may be instituted and progress, either while suit is pending upon such note, bill, bond, contract, or obligation, in favor of the obligee or obligees, payee or payees, of the same, or after judgment has been rendered thereon; but execution shall not be thereby delayed.

Suit on note, &c. not to be delayed by such proceedings.

Such proceedings may be had while suit pending, or after judgment.

SECT. 7. The provisions of this article shall be extended to the heirs, executor, or administrator of any deceased surety, as against the obligee or creditor, or his assignee, executor, or administrator, upon his compliance with the provisions of this article; but nothing herein contained shall be construed to extend to the official bonds of public officers, guardians, executors, administrators, or bonds with collateral conditions.

Provisions extended to heirs, executor, &c. of surety.

The provisions of this article limited.

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PART III.

Remedy of surety when he has paid judgment.

SECT. 8. When any surety, his heir, executor, or administrator, shall have paid or discharged the debt or contract of his principal, or part thereof, upon judgment rendered against him, he shall have judgment to recover the value or amount so paid or discharged, together with interest and costs, upon motion in the court where such judgment may have been rendered against such surety, his heir, executor, or administrator.

Remedy of surety against his co-surety.

SECT. 9. In cases where there are two or more sureties to any bond, bill, note, or contract, and one or more of such sureties are subjected by judgment of any court to the payment of the debt or damages, by default of the principal obligor or debtor, and such obligor or debtor be insolvent, so that the amount or value thereof, cannot be recovered of him, the court before whom such judgment may be rendered shall, upon motion of such surety or sureties, grant judgment that they recover against all and every the other co-sureties, their heirs, executors, and administrators, for their and each of their respective shares and proportions of the amount or value of such judgment, with damages and costs. *

Surety may not confess judgment, &c. to the prejudice of his principal.

SECT. 10. No surety, his heirs, executor, or administrator, shall be suffered to confess judgment, or suffer judgment by default, so as to distress his principal, if such principal will enter himself defendant to such suit, and tender to such surety, or his legal representative aforesaid, good collateral surety, to be approved by the court before whom such suit is pending.

Remedy of special bail by motion, &c.

SECT. 11. When the special bail of any judgment-debtor shall be damnified by the payment of such judgment, or part thereof, such bail, his heirs, executor, or administrator, may recover the amount of such payment, with interest and costs, of the said debtor, his executor or administrator, upon motion in the same court where judgment was rendered against such bail, or his legal representatives.

Ten days' notice of motion.

SECT. 12. In all proceedings by motion under this article, ten days' notice of such motion shall be given to the person against whom such judgment is to operate, by personal service in writing, if such person is a resident of this state; and if a resident out of the state, by publication in some newspaper printed in the county, or if no such paper is printed therein, then in one printed nearest thereto, for three successive weeks, at least twenty days before the term of such court.

Notice by publication.

* If a surety proceed under the statute, by notice and motion, for contribution against his co-surety, the record must show the insolvency of the principal. *Batson* v. *Lasselle*, 1 Blackf. 119.

If a debt be paid by the surety when it becomes due, he may sue his co-surety at law for contribution, whether the principal debtor be insolvent or not. *Judah* v. *Mieure*, 5 Blackf. 171.

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ARTICLE 1.

CHAPTER 52.

OF PRIVILEGE FROM ARREST.

SECTION
1. Members of the general assembly.
2. Electors.
3 Judges, clerk, and sheriff of the supreme court.
4. Judges of the circuit courts.
5. County commissioners.
6. Justices of the peace; attorneys at law; clerks; sheriffs; coroners; suitors; witnesses; jurors.
7. Persons performing military duty.
8. No person arrested in place of religious worship; nor on Sunday, except when specially allowed by law; nor arrested in legislative chambers; nor in court; nor on the 4th of July.
9. This chapter qualified.
10. Member of general assembly arrested on criminal charge, house to be notified.
11. When summons may be served.
12. Certain arrests lawful.
13. Person arrested contrary to these provisions, how discharged.
14. Damages which arrested party may recover.

Members of the general assembly, &c.

SECTION 1. The members of the general assembly of the state of Indiana, and the secretaries, clerks, sergeants-at-arms, doorkeepers, and messengers of either branch of the general assembly of this state shall be privileged from arrest during the sitting of the legislature, or either branch thereof to which they respectively belong, and also during the time necessarily employed in travelling to and returning from the place of their meeting, allowing one day for every twenty-five miles of the distance of the road most usually travelled; and all proceedings in suits pending in which any of the persons above mentioned is a party, shall be stayed during the time aforesaid.

Electors.

SECT. 2. All persons legally entitled to vote shall be privileged from arrest during the time of their attendance at elections, and while on the way going to and returning from such elections.

Judges, clerk and sheriff of supreme court.

SECT. 3. The judges and clerk and sheriff of the supreme court shall be privileged from arrest while attending on the court, and during the space of fifteen days next before the commencement, and for the space of ten days next after the close of any term thereof.

Judges of the circuit courts.

SECT. 4. The judges of the several circuit courts within this state during the sitting of their respective courts, and during the space of three days next before and after the close of any term thereof, shall be privileged from arrest.

County commissioners.

SECT. 5. Each member of the board of county commissioners, for the space of one day before any of their regular and legal sessions, during the time employed in said session, and for one day after the close thereof, shall be privileged from arrest.

Justices of the peace, attorneys at law, clerks, sheriffs, coroners, suitors, witnesses, and jurors.

SECT. 6. Justices of the peace, while engaged in hearing and determining any action, suit, or plaint, instituted before them, or any of them, and all attorneys and counsellors at law, clerks, sheriffs, coroners, and all suitors, witnesses, and jurors, while attending court, and while going to and returning from court, shall be privileged from arrest.

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PART III.

Persons performing military duty.

SECT. 7. No person shall be arrested while doing and performing military duty under the order of his commanding officer, or while going to or returning from the place of duty or parade.

No person arrested in any place of religious worship; nor on Sunday, except when allowed by law; nor arrested in the legislative chambers; nor in court; nor on the fouth of July. Exception.

SECT. 8. No person shall be arrested in any place of religious worship during the performance of divine service, or on the first day of the week, commonly called Sunday, except in particular cases provided for by law; nor in the chamber of either legislative body of this state during their sitting; nor in any court of justice during the sitting of the court; nor on the fourth day of the month of July, the anniversary of American independence; but nothing in this section contained shall be so construed as to prevent any person from arrest if he shall disturb or molest any religious congregation while engaged in or while met for worship, or any individual thereof.

This chapter qualified.

SECT. 9. Nothing in this chapter contained shall be construed to extend to cases of treason, felony, or any breach of the penal laws of this state.

Member of general assembly arrested on criminal charge, house to be notified.

SECT. 10. Where any of the members or officers of the general assembly shall be arrested upon any charge of treason, felony, or any breach of the peace, during the sitting of the legislature, it shall be the duty of the person issuing the process on which the arrest is made, forthwith to give written notice thereof to the house in which the person arrested shall be a member or officer, addressed to the president or speaker, as the case may be.

When summons may be served.

SECT. 11. Nothing herein contained shall be construed to privilege any person herein specified from being served, at any time, Sundays and the fourth of July excepted, with a summons or notice to appear.

Certain arrests lawful.

SECT. 12. All arrests not contrary to the provisions herein contained, made in any place on any water course or river within or bounding on this state shall be deemed lawful.

Person arrested contrary to these provisions, how discharged.

SECT. 13. If any person shall be arrested contrary to the provisions herein contained, and forcibly detained in custody, such persons may and shall be discharged by writ of habeas corpus, or in a summary way, by motion, before the court from which the process shall have issued, at the costs of the party suing out such process.

Damages which arrested party may recover.

SECT. 14. Whoever shall arrest, or cause to be arrested, any of the persons above privileged, when entitled to such privilege from arrest, shall forfeit and pay for every such offence the sum of one hundred dollars, as and for his damages, with costs of suit, to be recovered in an action on the case by the person injured.

THOMAS J. HENLEY,
Speaker of the House of Representatives.
THOMAS D. WALPOLE,
President, pro tem., of the Senate.

APPROVED FEBRUARY 11, 1843.

SAM. BIGGER.

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PART IV.

AN ACT CONCERNING CRIMES AND PUNISHMENT, AND PROCEEDINGS IN CRIMINAL CASES.

WHEREAS, it is expedient and proper that the various statutes of this state respecting crimes and punishment, and proceedings in criminal cases, should be revised and brought together under appropriate heads:

THEREFORE,

BE it enacted by the general assembly of the state of Indiana as follows:

CHAPTER 53.

OF CRIMES AND PUNISHMENT.

ARTICLE 1. Of crimes punished by death, or by confinement in the state prison.
ARTICLE 2. Of offences punished by imprisonment in the county jail, or by fine.
ARTICLE 3. Of petty offences punishable by fine only, before a justice of the peace.

ARTICLE I.

Of crimes punished by death or by confinement in the state prison.

SECTION
1. Treason.
2. Murder in the first degree.
3. Murder in case of a duel.
4. Same subject.
5. Murder in the second degree.
6. Manslaughter.
7. Assault, etc., with intent to commit a felony.
8. Administering poison with intent to kill.
9. Mingling poison with food, etc.
10. Malicious mayhem.
11. Kidnapping.
12. Rape.
13. Burglary.
14. Robbery.
15. Grand larceny.
16. Petit larceny by a male.
17. Petit larceny by a female.
18. Person convicted a second time for petit larceny, punished as for grand larceny.
19. Receiving stolen property.
20. Prior conviction of principal not necessary.
21. Larceny may be committed of notes, bills, etc.

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PART IV.

SECTION
22. Altering marks, brands, etc., of horses, cattle, etc., with intent to steal, etc., larceny.
23. When it shall be larceny to falsely personate another, etc.
24. False pretences, etc.
25. Arson.—If life of any one lost, offender guilty of murder.
26. Falsely making, defacing, etc., notes deeds, etc., with intent to defraud, forgery.
27. Uttering, etc., forged notes, deeds, etc., as true with intent to defraud, etc., forgery.
28. Counterfeiting gold or silver coin, or uttering the same, with intent to defraud, etc., forgery.
29. Selling coin, notes, etc., with intent to defraud, etc., deemed forgery.
30. Selling counterfeit coin, notes, etc., with intent to put the same in circulation, etc., deemed forgery.
31. Having in possession counterfeit coin, notes, etc., with intent to circulate, etc., deemed forgery.
32. Punishment of forgery.
33. Retaining counterfeiting apparatus.
34. Professional gambling.
35. Bribery.
36. Perjury in a judicial proceeding.
37. Perjury in voluntary affidavit, etc.
38. Subornation of perjury.

SECTION
39. Punishment of perjury and subornation of perjury.
40. Discretion to punish by confinement in state prison or jail in case of perjury.
41. Averments in indictments for perjury, etc.
42. Incest.
43. Bigamy.
44. Intermarriage with negroes.
45. Aiding or abetting crime, etc.
46. Accessories after the fact.
47. Accessories, etc., may be convicted before conviction, etc., of the principal offender.
48. Officer suffering person charged, etc., with crime punishable with death, to escape.
49. Same, where punishment is confinement in the state prison.
50. Person other than officer aiding in such escape when the crime is punishable with death.
51. Same, when the punishment is confinement in the state prison.
52. Convict escaping from the state prison.
53. Such convict may be retaken, and his confinement continued, etc.
54. Punishment in case of females.
55. Punishment in case of persons under twenty-one years of age.

Treason.

SECTION 1. Every person duly convicted of treason shall suffer death.

Murder in the first degree.

SECT. 2. If any person of sound memory and discretion shall purposely and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate, any rape, arson, robbery, or burglary, or by administering poison, or causing the same to be done, kill any reasonable creature in being and under the peace of this state, such person shall be deemed guilty of murder in the first degree, and upon due conviction thereof shall suffer death.*

* An indictment for murder may be good without stating the accused to be a person of sound memory and discretion; and though the killing must be shown to be unlawful, the word "unlawful" need not be used. *Jerry* v. *The State*, 1 Blackf. 395.

The words "malice aforethought," used in former statutes of this state, in defining the crime of murder, comprised both express and implied malice. See 4 Black. Comm. 198, 199. — The second and fifth sections of this chapter are taken substantially from the statute of Ohio. The following points, decided by the supreme court of that state, are appended:

Deliberate and *premeditated* malice, is where the wrong act was thought of and determined upon before it was done, though it need not be for any considerable time. *The State* v. *Turner*, Wright's Ohio R. 27.—*The State* v. *Gardiner*, Ib. 392.

The deliberate purpose to kill, necessary to constitute the crime of murder in the first degree, is that deliberation used in the formation of the evil design, before the aggressive

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Same in duel.

SECT. 3. If either party to a duel be killed, the survivor shall be deemed guilty of murder in the first degree, and shall suffer death.

Same subject.

SECT. 4. If any person shall, by previous engagement or appointment, made within this state, fight a duel without the jurisdiction of this state, and in so doing shall inflict a mortal wound upon any person, whereof the person so injured shall afterwards die within this state, such person so offending shall be deemed guilty of murder in the first degree within this state, in the county where such death shall happen, and shall suffer death.

Murder in the second degree.

SECT. 5. If any person shall, purposely and maliciously, but without deliberation and premeditation, kill any human being, every such person shall be deemed guilty of murder in the second degree, and on conviction thereof shall be imprisoned in the state prison and kept at hard labor during life.*

Manslaughter.

SECT. 6. If any person shall unlawfully kill any human being, without malice express or implied, either voluntarily upon a sudden heat, or involuntarily, but in the commission of some unlawful act, every such person shall be deemed guilty of manslaughter, and upon conviction thereof shall be imprisoned in the state prison and kept at hard labor, not more than twenty-one years, nor less than two years.

Assault, &c., with intent to commit a felony.

SECT. 7. Every person who shall perpetrate an assault, or an assault and battery, with intent to commit a murder, robbery, burglary, rape, or other felony, shall, upon conviction thereof, be imprisoned at hard labor in the state prison for any term of

act is actually committed. Where the purpose is coolly and deliberately formed, and time has elapsed since the receipt of the provocation, if any, for passion to subside, it is a question for the jury to decide, whether the slayer was influenced by heated passion, or by a deliberate and malicious artifice, to effect the destruction of his subject. *The State* v. *Town*, Wright's Ohio R. 75.

If the death was occasioned by the prisoner *purposely, of deliberate and premeditated malice*, the law pronounces him guilty of murder in the *first* degree. If the blow which occasioned the death was *purposely* and *maliciously* given by the prisoner, *without* deliberation and preconceived design, or was an act on which his mind had not previously resolved, the law defines the offence *murder in the second degree*. Malice and the purpose to kill are essential ingredients in both the degrees of murder — the difference between them is determined by the presence or absence of *deliberative purpose* or *premeditation*. *The State* v. *Thompson*, Wright's Ohio R. 617.

NOTE. — The opinion expressed by the court in the cases above referred to, of the *State* v. *Turner*, and the *State* v. *Town*, that an intention to kill is necessary to constitute manslaughter, is decided not to be law in the case of *Montgomery* v. *The State*, 11 Stanton (Ohio Rep.) 424.

The design or purpose to kill may be deduced from circumstances, the manner of inflicting the wounds, the instrument used, and its tendency to destroy life; if palpably calculated to take life, the party is supposed to intend so. *The State* v. *Gardiner*, Wright's R. 392.

The law presumes all killing malicious, and the circumstances of excuse must come from the defendant; but, when there are degrees of murder, the presumption of law against a prisoner, arising from *the fact of killing*, would only hold him guilty of murder in the *second* degree. *The State* v. *Gardiner*, Wright's Rep. 392; and *The State* v. *Turner*, Ib. 20.

If the jury do not, in a murder case, specify in their verdict whether they find the prisoner guilty of murder in the first or second degree, or of manslaughter, the court will refuse to pass sentence, and will award a new trial, even if not asked for. *The State* v. *Town*, Wright's Rep. 75.—*The State* v. *Gardiner*, Ib. 392.

* See note to section 2 of this chapter.

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PART IV.

time not exceeding fourteen years nor less than two years, and be fined in any sum not exceeding one thousand dollars.*

Administering poison with intent to kill.

SECT. 8. Every person who shall administer, or cause and procure to be administered, any poison to any other human being, with the intent to kill the person or persons to whom the same shall be administered, whereby death shall not ensue, upon conviction thereof, shall be punished by imprisonment at hard labor in the state prison for any term of time not less than three years.

Mingling poison with food, &c.

SECT. 9. Every person who shall mingle poison with any food, drink, or medicine, with intent to kill or injure any human being, or who shall poison any spring, well, or reservoir of water, with the intent aforesaid, shall, upon conviction thereof, be punished by imprisonment at hard labor in the state prison during any term of time not less than two years nor more than fourteen years.

Malicious mayhem.

SECT. 10. Every person who shall, on purpose and of malice aforethought, unlawfully disable the tongue, put out an eye, slit the nose, cut or bite off the nose, ear, lip, or other member of any person, with intent to disfigure or disable such person, shall be deemed guilty of malicious mayhem, and upon conviction thereof shall be imprisoned at hard labor in the state prison for a term of not less than two years nor more than fourteen years, and be fined in any sum not exceeding one thousand dollars.

Kidnapping.

SECT. 11. Every person who shall forcibly steal and take, or forcibly and unlawfully arrest any man, woman, or child, and carry or convey such man, woman, or child to parts without the state of Indiana, or aid or abet therein, or who shall forcibly and unlawfully take or arrest, or aid and abet in forcibly and unlawfully taking or arresting any person or persons whatever, with intent to take such person or persons to parts without the state, as aforesaid, without having first established a claim upon the services of such person or persons, according to the laws of this state or of the United States, shall be deemed guilty of kidnapping, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five thousand dollars, and be imprisoned at hard labor in the state prison for any term of not less than two years nor more than fourteen years.†

Rape.

SECT. 12. Every person who shall unlawfully and forcibly have carnal knowledge of a woman against her will, or of a woman child under twelve years of age, shall be deemed guilty of a rape, and upon conviction thereof shall be imprisoned at hard labor in the state prison for any period of time not exceed-

* An indictment for an assault with intent to commit a felony, must show with certainty the particular felony intended to be committed. *The State* v. *Hailstock*, 2 Blackf. 257.

In an indictment, a count charging a robbery from *A*, may be joined with a count charging an assault and battery with intent to rob *A*. *McGregg* v. *The State*, 4 Blackf. 101.

A charge of an assault and battery, *with intent to kill*, is only a charge of an assault and battery; the words "with intent to kill" being surplusage. *Sweetser* v. *The State*, 4 Blackf. 528.

† If the description of the offence, in an indictment for kidnapping, agree with the language of the statute, it is sufficient. *The State* v. *McRoberts*, 4 Blackf. 178.

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ing twenty-one years nor less than two years; and in prosecutions for the said offence, proof of penetration shall be deemed sufficient evidence of the commission thereof. ARTICLE 1.

Burglary.

SECT. 13. Every person who shall in the night time break and enter into a mansion house, store house, office, shop, outhouse, or boat, with intent to commit a felony, shall be deemed guilty of burglary, and upon conviction thereof, shall be imprisoned at hard labor in the state prison, for not less than two years nor more than fourteen years, and be fined in any sum not exceeding one thousand dollars.

Robbery.

SECT. 14. Every person who shall, forcibly and feloniously, take from the person of another any money, goods, or other article of value, by violence or putting in fear, shall be deemed guilty of robbery, and upon conviction thereof, shall be imprisoned at hard labor in the state prison, for not less than two years nor more than fourteen years, and be fined in any sum not exceeding one thousand dollars. *

Grand larceny.

SECT. 15. Every person who shall feloniously steal, take and carry, lead, or drive away, the personal goods of another, of the value of five dollars or upwards, shall be deemed guilty of grand larceny, and upon conviction thereof, shall be fined in any sum not exceeding double the value of the goods stolen, and be imprisoned at hard labor in the state prison for not less than two years nor more than fourteen years, and shall also be disfranchised, and rendered incapable of holding any office of trust or profit, during life, or for any determinate period. †

Petit larceny by a male.

SECT. 16. Every person, if a male, who shall feloniously steal, take and carry, lead, or drive away, the personal goods of another, of the value of any sum less than five dollars, shall be deemed guilty of petit larceny, and upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars, and be imprisoned at hard labor in the state prison, for not less than one year nor more than three years, and disfranchised and rendered incapable of holding any office of trust or profit, during life, or for any determinate period; or fined and disfranchised, and rendered incapable of holding any office of trust or

* See note to section 7 of this chapter.

† See post, section 81 of chapter 54.

The indictment charged the defendant with stealing several articles of personal property, and alleged their aggregate value to be 250 dollars, but did not specify the separate value of any one article. Plea, not guilty. Verdict of guilty, and judgment accordingly. Motion in arrest of judgment, because the specific value of each article charged to have been stolen was not alleged in the indictment. *Held*, that the motion could not be sustained. The defendant was convicted of stealing all the things mentioned in the indictment: in such case, the statement of one value to all the articles stolen is sufficient. 5 Blackf. 224.

Indictment for larceny. Plea, not guilty. When the testimony was closed, the prisoner called upon the court to instruct the jury to find a verdict in his favor should they be of opinion that the offence proved amounted to a burglary. This instruction was refused. *Held*, that the refusal was not erroneous. *Wyatt* v. *The State*, 1 Blackf. 257.

An indictment for larceny is not supported by evidence that the defendant has received or purchased the goods, knowing them to be stolen; although, by the statute, the punishment for the offence proved be the same with that charged. *Ross* v. *The State*, 1 Blackf. 390.

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PART IV.

profit as aforesaid, and imprisoned in the jail of the proper county for any determinate period of time, not exceeding one year.

Petit larceny by a female.

SECT. 17. Every person, if a female, who shall feloniously steal, take and carry, lead or drive away, the personal goods of another, of the value of any sum less than five dollars, shall be deemed guilty of petit larceny, and upon conviction thereof, shall be imprisoned in the county jail of the proper county, for any length of time not exceeding sixty days, and rendered incompetent during life, or for any determinate period of time, in the discretion of the jury, as a witness in any court of justice.

Person convicted a second time for petit larceny, punished as for grand larceny.

SECT. 18. Any person, male or female, shall, on a second conviction of petit larceny in any court within this state, suffer the punishment, pains, and penalties, prescribed for those convicted of grand larceny.

Receiving stolen property.

SECT. 19. Every person who shall buy, receive, conceal, or aid in the concealment of any stolen money, goods, or property, knowing the same to have been stolen, shall, upon conviction thereof, suffer the punishment, pains, and penalties, prescribed for those who are principally guilty of any such larceny.*

Prior conviction of principal not necessary.

SECT. 20. In any indictment or prosecution for the offence of buying, receiving, concealing, or aiding in the concealing of any stolen money, goods, or property, it shall not be necessary to aver, nor on the trial thereof to prove, that the person who stole such property has been convicted.

Larceny may be committed of notes, bills, &c.

SECT. 21. Bonds, promissory notes, bank notes, treasury notes issued by the authority of the state of Indiana, canal scrip, bills of exchange, or other bills, orders, drafts, checks, or certificates, for or concerning money, goods, or property, due or to become due, or to be delivered, any deed or writing containing a conveyance of land, or any valuable contract in force, or any receipt, release, or defeasance, or any other instrument whatever, shall be considered as personal goods, of which larceny may be committed.

Altering marks, brands, &c. of horses, cattle, &c. with intent to steal, &c., larceny.

SECT. 22. Every person who shall alter the mark or brand of the horse, mare, gelding, mule, ass, sheep, goat, neat cattle, or hog of another, or mark or brand the same, with intent to steal such horse, mare, gelding, mule, ass, sheep, goat, neat cattle, or hog, shall, if the value of the animal or animals so marked be five dollars or upwards, be subject to the punishment inflicted on those guilty of grand larceny; and if the value of such animal or animals be less than five dollars, such person shall be

* The indictment contained two counts, one against *B* for stealing, the other against *A* for receiving the goods, knowing them to be stolen. *Held*, that the second count was not objectionable for not stating the time, place, value of the goods, &c., these requisites being laid in the first count and referred to in the second. *Held*, also, that there was no misjoinder. *Redman* v. *The State*, 1 Blackf. 429.

Indictment for receiving stolen goods, knowing them to be stolen. *Held*, that the time and place when and where the goods were stolen, need not be stated in the indictment, nor proved at the trial. *Holford* v. *The State*, 2 Blackf. 103.

The receiving of stolen goods is a crime independent of the stealing, and is subject to punishment without reference to the trial or conviction of the thief. *Redman* v. *The State*, 1 Blackf. 429.

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ARTICLE 1.

subject to the punishment inflicted on those guilty of petit larceny.

When it shall be larceny to falsely personate another, &c.

SECT. 23. Every person who shall falsely personate or represent another, and in such assumed character shall receive any money, or other property whatever, intended to be delivered to the party so personated, with the intent to convert the same to his own use, shall be deemed by so doing to have committed the crime of larceny, and shall suffer the punishment inflicted on those guilty of grand or petit larceny, according to the value of the money or property so received as aforesaid.

False pretences etc.

SECT. 24. If any person, with intent to defraud or cheat another, shall designedly, by color of any false token or writing, or by any false pretence or pretences, obtain the signature of any person to any written instrument, or obtain from any person any money, bank note or notes, treasury note or notes, goods, wares, merchandise, bond, bill of exchange, promissory note, contract, security, or order for the payment of money, or delivery or transfer of property or any thing of value, such person so offending shall, upon conviction thereof, be imprisoned at hard labor in the state prison, for any term of time not less than two years, nor more than seven years, and fined in any sum not exceeding double the value of the property, amount, or thing so obtained.*

Arson.

SECT. 25. Every person who shall wilfully and maliciously burn the dwelling house, out house, barn, stable, boat, water craft, mill, mill house, distillery, still house, manufactory, mechanic's or artificer's shop, store house, building, or room, occupied as a shop or office for professional business, or printing office of another, or any public bridge, court house, jail, market house, church or meeting house, school house, seminary or college edifice, or building belonging thereto, or other public building whatever, shall be deemed guilty of arson, and, upon conviction, be fined not exceeding double the value of the property destroyed, and be imprisoned in the state prison, at hard labor, for a period not less than two years, nor more than ten years; and should the life or lives of any person or persons

If life of any one be lost, offender guilty of murder.

*On an indictment for obtaining by *false pretences* the signature of a party to a note, where the pretence was, that the prisoner had money in the hands of a third person, absent at the time, *it was held*, that it was not material to prove the amount represented, to be the identical sum stated in the indictment; that it was enough if it was sufficient to meet the payment of the note which the party was induced to sign. *The People* v. *Herrick*, 13 Wendell's New York Rep. 87.

It is competent to a party whose signature has been fradulently obtained, to state the reasons why he did not confide in the *personal responsibilty* of the accused. Ibid.

If the accused attempt to show his *ability* to pay, the proof must be limited to the *time* when the signature was obtained. Ibid.

A *false representation* authorizes the inference of an intent to defraud. Ibid.

It is not necessary to a conviction, that the false pretences should be the *sole inducement* to the signing of the note; if they have a controlling influence in inducing the signature, it is enough, although minor considerations operate on the mind of the party. Ibid. And see *The People* v. *Haynes*, 11 Wendell 557

Where a signature to a note has been obtained by false pretences, and the party defrauded has been obliged to pay the note, the indictment may charge the *sum paid* to have been obtained by false pretences, without setting forth the obtaining of the signature. 13 Wendell 87.

Proof that a party from whom a note has been obtained by false pretences, has been subjected to the payment of the money specified in the note, is inadmissible unless there

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be lost thereby, such offender shall be deemed guilty of murder in the first degree, and shall suffer death accordingly.*

Forgery of notes, deeds, records, &c., with intent to defraud, &c.

SECT. 26. Every person who shall falsely make, deface, destroy, alter, forge, or counterfeit, or cause or procure to be falsely made, defaced, destroyed, altered, forged, or counterfeited, or shall willingly assist in falsely making, defacing, destroying, altering, forging, or counterfeiting, any record, deed, testament, will, codicil, bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, bank note, post note, receipt for money or property, power of attorney, certificate of a justice of the peace, or other public officer, auditor's warrant, treasury note, county order, acceptance, or endorsement of any bill of exchange, promissory note, draft, or order, or assignment of any bond, writing obligatory, or promissory note for money or property, or any order or draft for the payment of money or property, or any written contract of any nature or kind whatever, or any other instrument in writing whatever, with intent to defraud any person or persons, body politic or corporate, shall be deemed guilty of forgery. †

be a count for obtaining money by false pretences. *The People* v. *Gates*, 13 Wendell 311.

In an indictment under the statute for obtaining by false pretences the signature of a person to a written instrument, it is not necessary to charge loss or prejudice to have been sustained by the prosecutor; the offence is complete when the signature is obtained by false pretences, with intent to cheat or defraud; and it is not essential that actual loss or injury should be sustained. *The People* v. *Gerung*, 11 Wendell 18.

A writing in the form of a bond, neither having the signature nor purporting to have the signature of any person attached to it, is not a false writing within the meaning of the statute. To constitute it such, it must be some instrument, letter, or other writing false in fact, but purporting to have been signed by some person, and to be his act, and so framed as to have more weight and influence in effecting the fraud of obtaining a signature to a written instrument, or goods, etc., than the mere naked assertion of the party defrauding. *The People* v. *Gates*, 13 Wendell 311.

The statute against obtaining goods by false pretences extends to every case where a party has obtained money or goods by falsely representing himself to be in a situation in which he is not, or by falsely representing any occurrence that has not happened, and to which representations, persons of ordinary caution may give credit. *The People* v. *Haynes*, 11 Wendell 557.

An indictment lies for obtaining goods by false pretences, where a party represents himself to be the owner of property which does not belong to him, and thus fraudulently induces the owner to sell the goods to him on a credit. The gist of the offence in such case, consists in procuring the goods of another by false pretences, with the intent to cheat and defraud; intentionally and fraudulently inducing the owner to part with his property, by wilful falsehoods, in representing himself to be in a condition in which he knew he was not. *The People* v. *Kendall*, 25 Wendell 399.—14 Wendell 558.—11 Wendell 565.

* See *McNeal* v. *Woods*, 3 Blackf. 485.

† An indictment lies, under the statute of the state, for counterfeiting the current coin of the United States. *Chess* v. *The State*, 1 Blackf. 198.

The act of congress which prohibits counterfeiting coin, &c., provides that nothing in that act shall deprive any state court of jurisdiction over the offence, under the laws of the state. Gordon's Dig., page 711—*Houston* v. *Moore*, 5 Wheaton, 1.

It is the general rule, that in indictments for forgery, the instrument must be set out. There are, however, some exceptions to this rule; as when the forged instrument has been destroyed by the prisoner, or has remained in his possession, or cannot be produced, and there has been no laches on the part of the prosecution. See *The Commonwealth* v. *Houghton*, 8 Mass. R. 107—2 Cowen, 522.

To constitute the offence of forgery in counterfeiting the notes of a bank, it is not necessary that such bank as the notes purport to have been issued by should have a legal existence. When, however, the intent is charged to have been to defraud the bank purporting to have issued the notes, the bank must be shown to be a real body, capable of being defrauded. *The People* v. *Peabody*, 25 Wendell, 472.

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Uttering, &c., any forged notes, deeds, records, &c., as true, with intent to defraud, &c.

SECT. 27. Every person who shall utter or publish as true, any false, defaced, altered, forged, or counterfeited record, deed, will, testament, codicil, bond, writing obligatory, bill of exchange, promissory note for the payment of money or property, receipt or acquittance for money or property, power of attorney, certificate of a justice of the peace, or other public officer, auditor's warrant, treasury note, county order, commission, or pardon, acceptance of a bill of exchange, draft, or order, endorsement, or assignment, of any bill of exchange, promissory note for money or property, bond, power of attorney, or writing obligatory, or any order or draft for the payment of money or property, any written contract of any nature or kind whatever, or any other instrument in writing, knowing the same to be false, defaced, altered, forged, or counterfeited, with intent to defraud any person or persons, body politic or corporate, shall be deemed guilty of forgery.

Counterfeiting gold or silver coin, or uttering, &c., the same in payment.

SECT. 28. Every person who shall forge or counterfeit any gold or silver coin, which shall be at the time current or in circulation in this state, or utter, or pay, or tender in payment, any such false, forged, or counterfeit coin, or any false, forged, or counterfeit bank note or notes, bill or bills, treasury note or treasury notes, knowing the same to be false, forged, or counterfeit, with intent to defraud any person or persons, body politic or corporate, shall be deemed guilty of forgery.

Selling counterfeit coin, notes, &c., with intent to defraud, deemed forgery.

SECT. 29. Any person who shall, with intent to defraud any person or persons, or any corporation, give, barter, sell, or put away, any false, forged, or counterfeit gold or silver coin, which shall be at the time current, or in circulation in this state, or any bank note or notes, bill or bills, or any draft or certificate of deposit drawn on or by any bank of this state, or of any state or territory of the United States, knowing the same to be false, forged, or counterfeit, shall be deemed guilty of forgery.

Selling counterfeit coin, notes, &c., with intent to circulate, &c., deemed forgery.

SECT. 30. Every person who shall give, barter, sell, utter, publish, or put away, any false, forged, or counterfeit, gold or silver coin, which shall be at the time current or in circulation in this state, or any false, forged, or counterfeit bank note or notes, bill or bills, or any draft, or certificate of deposit, drawn on or by any bank of this state, or of any state or territory of the United States, with intent to put or have the same put in circulation, and knowing the same to be false, forged, or counterfeit, shall be deemed guilty of forgery.

Having in possession counterfeit coin, notes, &c., with intent to circulate, &c., deemed forgery.

SECT. 31. Every person who shall have in his possession any false, forged, or counterfeit, gold or silver coin, which shall be at the time current, or in circulation in this state, or any false, forged, or counterfeit bank note or notes, bill or bills, with intent to put or have the same put in circulation, and knowing the same to be false, forged, or counterfeit, shall be deemed guilty of forgery.

Punishment of forgery.

SECT. 32. Every person duly convicted of forgery, shall be imprisoned at hard labor in the state prison, for any term of

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time not less than two nor more than fourteen years, and fined in any sum not exceeding one thousand dollars.

Retaining counterfeiting apparatus.

SECT. 33. If any person shall knowingly retain in his possession any die or dies, plate, or plates, or other apparatus, made use of in forging or counterfeiting any gold or silver coin, which is or may be current and in circulation within this state, or in forging or counterfeiting bank notes, or treasury notes, such person shall, upon conviction thereof, be imprisoned at hard labor in the state prison, for any period of time not less than two years nor more than five years, and shall be fined in any sum not exceeding one thousand dollars. *

Professional gambling.

SECT. 34. Every person who shall be the keeper or exhibiter of any gaming table, such as A B C, or E O table, billiard table, roulette, shuffle board, faro bank, or any other gaming table, establishment or apparatus, for the purpose of winning or gaining money, or other article or property of value, and every person who shall get his livelihood by gaming, and having no other visible occupation or calling, or shall be found wandering about from place to place, without fixed residence in this state, in the habit or practice of gambling, shall be deemed and taken a professional gambler, and shall, upon conviction thereof, be imprisoned at hard labor in the state prison, for not less than one year, nor more than five years, at the discretion of the jury trying the same, who may also add disfranchisement for any term not exceeding five years.

Bribery.

SECT. 35. If any judge or other officer entrusted with the administration of justice, shall take any undue reward to influence his behaviour in office, or if any person shall offer or give any such reward, he or they so offending as aforesaid, shall be fined in any sum not exceeding treble the amount of the sum so offered, given, or received, and be imprisoned at hard labor in the state prison, for any term of time not exceeding ten nor less than two years.

Perjury in a judicial proceeding.

SECT. 36. Any person who, having taken a lawful oath, or made affirmation, in any judicial proceeding, or in any other matter in which by law an oath or affirmation may be required, shall, under or upon such oath or affirmation, swear or affirm, wilfully, corruptly, and falsely, touching a matter material to the issue or point in question, shall be deemed guilty of perjury.†

* An indictment charged the defendant with knowingly retaining in his possession certain dies and plates, and other apparatus and instruments made use of in forging, &c. *Held*, that the words "other apparatus and instruments," in the indictment were surplusage. *Held*, also, that to convict the defendant, it must be proved that he knowingly retained in his possession some instrument named in the indictment. *Peoples* v. *The State*, 6 Blackf. 95.

† In an indictment for perjury, the oath said to be false was charged to have been administered in the circuit court by *S C*, as deputy clerk. *Held*, that no proof of the appointment of the deputy clerk was necessary; that in administering the oath *S C* acted under the superintendence of the court; and that the oath was as obligatory as if it had been administered by one of the judges. *Scrover* v. *The State*, 2 Blackf. 35.

An indictment for perjury must show conclusively, that the testimony given by the defendant, and charged to be false, was material to the issue on the trial of which he was sworn. *Weathers* v. *The State*, 2 Blackf. 278.

An indictment for perjury charged the defendant with making an affidavit that a boat was, as he believed, attempting to pass a certain place, &c., whereas he did not

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ARTICLE 1.

Perjury in voluntary affidavit, &c.

SECT. 37. Every person who shall, wilfully, corruptly, and falsely, before any justice of the peace or other officer authorized to administer oaths, under oath or affirmation, make any false certificate, affidavit, or statement of any nature, or for any purpose whatever, shall be deemed guilty of perjury.*

Subornation of perjury.

SECT. 38. If any person shall suborn, persuade, cause, or procure any person to commit perjury, every person so offending shall be deemed guilty of subornation of perjury.

Punishment of perjury and subornation of perjury.

SECT. 39. Every person duly convicted of perjury, or of subornation of perjury, shall be imprisoned at hard labor in the state prison for any term of time not less than two years nor more than twenty-one years, and be fined in any sum not exceeding one thousand dollars, except as provided in the next section.

Discretion to punish by confinement in state prison, or in jail, in case of perjury, &c.

SECT. 40. Upon conviction of perjury, or of subornation of perjury, it shall in all cases be left to the sound discretion of the court or jury trying the cause, to substitute, instead of confinement in the state prison, confinement in the county jail for any determinate period.

Averments in indictment for perjury, &c.

SECT. 41. In indictments for perjury it shall only be necessary to set forth, in the indictment, the names of the parties to the suit in which the perjury is alleged to have been committed, in what court the party charged was sworn, and by whom, averring such court or officer to have competent authority, the statement sworn to, together with the proper averments to falsify the matters whereof the perjury charged therein may be assigned, without setting forth the bill, answer, information, indictment, or any part of the record or proceedings, either in law or equity, and without setting forth the commission or authority of the court or officer before whom the perjury is alleged to have been committed.

Incest.

SECT. 42. If any step-father shall have sexual intercourse with his step-daughter, knowing her to be such; or if any step-mother and her step-son shall have sexual intercourse together, having knowledge of their relationship; or if any father shall have sexual intercourse with his daughter, knowing her to be such; or if any brother and sister, being of the age of sixteen years and upwards, shall have sexual intercourse together, having knowledge of their consanguinity, every step-father,

believe that the boat was attempting to pass said place, &c. *Held*, that the indictment was not objectionable for not alleging that the boat was not attempting to pass the place, &c. *The State* v. *Cruikshank*, 6 Blackf. 62.

Where a man swears that a thing is so, or that he believes it to be so, when, in truth, he does not believe it to be so, *the oath is false*, though the fact really be as stated. Ib.

Perjury may be committed in giving evidence before a grand jury. *The State* v. *Offutt*, 4 Blackf. 355.

An indictment for perjury must state a day certain on which the offence was committed. Ib.

If a witness, with an intention to deceive the jury, swear so as to make an impression on their minds that a fact material in the cause is different from what it really is, and from what he knows it to be, he is guilty of perjury. *Scott* v. *Mortsinger*, 2 Blackf. 454.

* If an affidavit be made under an act of congress relative to the sale of public lands, and the party in making it commit perjury, he may be punished under the act of congress prohibiting the offence; but the courts of this state have no jurisdiction of the case.—*The State* v. *Adams*, 4 Blackf. 146.

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step-mother, step-son, father, brother, or sister so offending, shall be deemed guilty of incest, and on conviction thereof shall be imprisoned in the state prison, and be kept at hard labor, not more than ten years and not less than two years.

Bigamy.

SECT. 43. If any person, being married, shall marry again, the former husband or wife being alive, and the bond of matrimony still subsisting and undissolved, such person so offending shall be deemed guilty of bigamy, and upon conviction thereof may, in the discretion of the jury, be fined in any sum not exceeding one thousand dollars, or be imprisoned at hard labor in the state prison for any term of time not exceeding five years nor less than two years.

Intermarriage with negroes, &c.

SECT. 44. No negro man, or person having one eighth part or more of negro blood, shall be permitted to marry any white woman of this state; nor shall any white man be permitted to marry any negro woman, or any woman having one eighth part or more negro blood; and each and every person who shall knowingly marry in violation of the provisions of this section, shall, upon conviction thereof, be imprisoned at hard labor in the state prison for not less than one year nor more than ten years, and be fined in any sum not less than one thousand dollars nor more than five thousand dollars.

Aiding or abetting crime, &c.

SECT. 45. Every person who shall be aiding or abetting in the commission of any crime or offence specified in this article, or who shall counsel, encourage, hire, command, or otherwise procure such crime or offence to be committed, shall suffer the same punishment and penalties which are by law prescribed for the punishment of the principal offender.

Accessories after the fact.

SECT. 46. Every person not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, or of master or apprentice, to any person guilty of any crime or offence specified in this article, who shall, after the commission of such crime or offence, harbor, conceal, maintain, or assist any such offender, with intent that he shall escape from detection, arrest, trial, or punishment, shall be deemed an accessory after the fact, and upon conviction thereof shall be imprisoned at hard labor in the state prison for not more than five years nor less than one year.

Accessories, &c. may be convicted before conviction, &c. of the principal offender.

SECT. 47. Every person who shall be guilty of any crime or offence punishable by the provisions of the last two preceding sections, may be indicted and convicted before or after the principal offender is indicted or convicted.

Officer suffering prisoner charged, &c. with crime punishable with death, to escape.

SECT. 48. If any officer, whose duty it may be to have the custody of any prisoner charged with or convicted of any crime against any law of this state, the punishment for which is death, shall voluntarily suffer any such prisoner being in his custody, to escape therefrom, such officer, on conviction thereof, shall be imprisoned at hard labor in the state prison for not more than twenty-one years nor less than two years.

Same, when the punishment

SECT. 49. If any officer, whose duty it may be to have the custody of any prisoner charged with or convicted of any crime

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or offence against any law of this state, the punishment for which is confinement at hard labor in the state prison, shall voluntarily suffer any such person being in his custody to escape therefrom, such officer, upon conviction thereof, shall suffer the punishment and penalties of law provided against or incident to the crime or offence with which such prisoner, thus escaping, shall have been charged, or of which he or she shall have been convicted.

is confinement in the state prison.

SECT. 50. If any other person, than the officer, who has the custody of any prisoner charged with or convicted of a crime against any law of this state, the punishment for which is death, shall aid, effect, or accomplish the escape of any such prisoner out of custody, such person, on due conviction thereof, shall be imprisoned at hard labor in the state prison for not more than twenty-one years nor less than two years.

Person other than an officer aiding in such escape, when the crime is punishable with death.

SECT. 51. If any other person, than the officer, who has the custody of any prisoner charged with or convicted of a crime or offence, the punishment for which is hard labor in the state prison, shall aid, effect, or accomplish the escape of any such prisoner out of custody, such person, on due conviction thereof, shall suffer the punishment and penalties by law provided against or incident to the crime or offence with which such prisoner shall have been charged, or of which he or she shall have been convicted.

Same, when the crime is punishable by confinement in the state prison.

SECT. 52. Every convict confined in the state prison, who shall escape therefrom, shall, upon conviction, be punished by imprisonment at hard labor in the state prison, for any term of time not exceeding double the length of time for which such escaping convict was originally sentenced, to commence from and after the expiration of the original term of his or her imprisonment.

Convict escaping from the state prison.

SECT. 53. If any prisoner confined in the state prison, shall escape therefrom, he may be pursued, retaken, and imprisoned again, notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time when he shall be retaken, and shall remain so imprisoned until tried for such escape, or until he be discharged on a failure to prosecute therefor.

Such convict may be retaken and his confinement continued etc.

SECT. 54. Upon the conviction of any female of any crime or offence specified in this article, the punishment for which is confinement at hard labor in the state prison, she may, instead of such punishment, be imprisoned at hard labor in the jail of the county, under the direction of the jailer.

Punishment in case of females.

SECT. 55. Whenever any person under the age of twenty-one years, shall be convicted of any crime or offence, the punishment for which is confinement at hard labor in the state prison, the jury, in their discretion, may, instead of such judgment, substitute imprisonment in the county jail for such determinate period as to them shall seem right under the circumstances of the case.

Punishment in case of persons under twenty-one years of age.

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ARTICLE II.

Of offences punished by imprisonment in the county jail, or by fine.

SECTION
56. Challenge to fight a duel.
57. Fighting a duel and death does not ensue.
58. Simple mayhem.
59. Riot.
60. Rout.
61. Unlawful assembly.
62. Affray.
63. Assault and battery.
64. Same, on person parting combatants, etc.
65. Common nuisance.
66. Court may adjudge removal of nuisance.
67. Noxious caves.
68. Tippling houses.
69. Selling unwholesome provisions.
70. Forcible entry and detainer.
71. Malicious trespass.
72. Cutting, boxing, or boring trees, etc.
73. Cutting or removing timber or stone, etc., from United States' lands.
74. Last section modified.
75. Erecting mill dam, etc., across river which has not been surveyed, etc., by the United States.
76. Influencing a jury by promises, etc.
77. Conspiracy to procure an indictment.
78. Barratry.
79. Usurpation.
80. Adultery and fornication.
81. Public indecency.
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83. Official negligence.
84. Extortion by public officers.
85. Official negligence by clerks of supreme or circuit courts.
86. Official negligence in relation to county seminaries.
87. Frauds against the revenue.
88. Board doing county business failing to appoint assessor, or neglecting other duties relating to the revenue.
89. Clerk failing to keep his records in the proper office.
90. Person refusing to give list, etc., of his taxable property.

SECTION
91. Transacting business without license required by law.—Exceptions.
92. Vending foreign merchandise without license, etc.
93. Vending spirituous liquors without license.
94. Exhibition of shows, etc., without license.
95. Selling or giving spirituous liquors to a minor under eighteen years, or to an intoxicated person.
96. Same, in case of an Indian.
97. Tavern keeper, etc., taking greater price than fixed in his schedule of rates, or neglecting to keep up such schedule.
98. Gaming.
99. Gaming in tavern or grocery.
100. Gaming house, etc.
101. Evidence thereof.
102. Tavern or grocery keeper suffering gaming, etc.
103. Suffering horse to run, or riding horse race.
104. Selling lottery tickets.
105. Removing land marks.
106. Setting woods or prairie on fire.
107. Carrying concealed weapons.
108. Bringing paupers, etc., within this state, etc.
109. Administering drugs, etc., to procure abortion.
110. Disturbing religious society or other lawful public meeting.
111. Disinterring dead bodies.
112. Assisting marriage, etc., between white persons and negroes, etc.
113. Fraudulent conveyances, etc.
114. Discovery of the fraud by a party not evidence against him.
115. Giving free papers or assisting slaves to escape, etc.
116. Obstructing process—rescue, etc.
117. Officer negligently permitting prisoner to escape, etc.
118 Aiding an attempt to escape, etc.
119. Failing to assist officer, etc.

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ARTICLE 2.

Challenge to fight a duel.

SECT. 56. Every person who shall give or accept a challenge to fight a duel, or who shall agree to go out of this state for the purpose of fighting a duel, or who shall knowingly carry to another person a challenge to fight a duel, shall, upon conviction thereof, be fined in any sum not exceeding two thousand dollars, and be imprisoned not exceeding one year in the jail of the proper county.*

Fighting a duel and death does not ensue.

SECT. 57. Every person who shall actually fight a duel, if death do not ensue, shall, on conviction thereof, be fined in any sum not exceeding five thousand dollars, and be imprisoned in the jail of the proper county for any term of time not exceeding one year.

Simple mayhem.

SECT. 58. Every person who shall violently and unlawfully deprive another of the use of any bodily member, or who shall unlawfully and wilfully disable the tongue or eye, or slit or bite the nose, ear, or lip of another, shall be deemed guilty of simple mayhem, and, upon conviction thereof, shall be fined in any sum not exceeding two thousand dollars, nor less than five dollars, and may be imprisoned in the county jail for any term of time not exceeding six months and not less than twenty days.†

Riot.

SECT. 59. If three or more persons shall actually do an unlawful act of violence, either with or without a common cause or quarrel, or even do a lawful act in a violent and tumultuous manner, they shall be deemed guilty of a riot, and, upon conviction thereof, shall be fined any sum not exceeding five hundred dollars each, to which may be added imprisonment in the county jail for any term of time not exceeding three months.‡

Rout.

SECT. 60. If three or more persons shall meet together to do an unlawful act, upon a common cause, or quarrel, and shall make advances towards the commission thereof, they shall be deemed guilty of a rout, and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or may be imprisoned in the county jail for any term of time not exceeding sixty days.

* The giving of a verbal challenge to fight a duel is an indictable offence. *The State* v. *Perkins*, 6 Blackf. 20.

† *Son assault*, is a good defence to an indictment for mayhem; but the defence can only be sustained by proof that the resistance was in proportion to the injury offered. *Hayden* v. *The State*, 4 Blackf. 546.

‡ If three or more persons do an unlawful act of violence—as if they violently and unlawfully burst open the door of another person's dwelling house, etc.—the offence is indictable under the statute. *The State* v. *Scaggs*, 6 Blackf. 37.

Indictment against three persons for a riot. Plea, not guilty. Verdict of guilty as to one, and of not guilty as to the others. *Held*, that upon this verdict, a judgment could not be rendered against the defendant found guilty. Aliter, if the indictment had been against the defendants, together with others whose names were unknown *Turpin* v. *The State*. 4 Blackf. 72.

If an indictment for a riot contain a clause charging a particular act, which might have been omitted altogether without rendering the indictment insufficient, it ought not to be quashed because such clause does not contain an averment that such act was done riotously. See 5 Blackf. 365.

Indictment against several persons for a riot. The defendants, on a joint trial, were found guilty and separately fined by the jury. Judgment accordingly. *Held*, that the prosecuting attorney was entitled to a docket fee against each of the defendants. *The State* v. *Cripe*, 5 Blackf. 6.

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PART IV.

Unlawful assembly.

SECT. 61. If three or more persons shall assemble together to do an unlawful act, and separate without doing the same, or advancing towards it, they shall be deemed guilty of an unlawful assembly, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars. *

Affray.

SECT. 62. If two or more persons shall, by agreement, fight in any public place, to the terror of the citizens of this state, the persons so offending shall be deemed guilty of an affray, and, upon conviction thereof, shall be fined in any sum not exceeding twenty dollars, or imprisoned for any term of time not exceeding five days each. †

Assault and battery.

SECT. 63. Every person who shall, in a rude, insolent, or angry manner, unlawfully touch, strike, beat, or wound another, shall be deemed guilty of an assault and battery, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, to which may be added imprisonment for any term of time not exceeding six months. ‡

Same on person parting combatants, &c.

SECT. 64. If a person shall declare his intention to part combatants, or to prevent an affray, assault and battery, or other breach of the peace, and shall be lawfully and in good faith engaged in endeavoring to part such combatants, or to prevent such affray, assault and battery, or other breach of the peace, if any other person shall wilfully and unlawfully commit an assault and battery on the person so engaged, after having declared such intention, the person so offending shall be fined in any sum not less than five dollars nor more than one thousand dollars, to which may be added imprisonment in the county jail not exceeding six months.

Common nuisance.

SECT. 65. Every person who shall erect, or continue and maintain, any public nuisance, to the injury of all or any part of the citizens of this state, shall be fined in any sum not exceeding one hundred dollars.

Court may adjudge removal of nuisance.

SECT. 66. After any person shall have been convicted of erecting or maintaining any public nuisance as aforesaid, the circuit court may make it a part of the judgment, upon such conviction, that such nuisance be removed by the sheriff: and no inquest, proceedings, or judgment, under or in accordance with the laws of this state, allowing and regulating the writ of ad quod damnum, shall bar any prosecution under this and the preceding section.

Noxious caves, &c.

SECT. 67. If any person or persons, being the owner or owners, occupier or occupiers, of any cave of salt petre, epsom

* Indictment against eight persons for an unlawful assembly. Five of the defendants appeared and pleaded not guilty; and two of these five were found guilty, and three not guilty. *Held*, that the judgment should be entered against the two found guilty, but that they must have been discharged, had all the others indicted been tried and acquitted. *The State* v. *Bailey*, 3 Blackf. 209.

† Indictment against two persons for an affray. The only proof was, that the defendants were seen in close combat, lying on the ground. *Held*, that this evidence was not sufficient to support the indictment. *Klum* v. *The State*, 1 Blackf. 377.

‡ A common assault is not an indictable offence. It is punishable, however, by a justice of the peace. See post, article 3 of this chapter, and also chapter 55.

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salts, or other cave of like noxious qualities, shall permit the same to remain unenclosed, and exposed to the stock, cattle, or horses of the neighborhood, such person or persons so offending shall, upon conviction thereof, be fined the sum of ten dollars for every day such nuisance shall be continued.

Tippling houses, &c.

SECT. 68. All tippling houses, or places wherein spirituous or intoxicating liquors are sold without license, to be drunk in or about the same, if kept in a disorderly manner, shall be, and they are hereby declared to be common and public nuisances; and all and every person who shall erect, keep, continue, or maintain, any such nuisance, to the annoyance, disturbance, or injury, of all or any part of the citizens of this state, shall, upon conviction thereof, be fined in any sum not less than twenty-five dollars, nor more than one hundred dollars.

Selling unwholsome provisions.

SECT. 69. Every person who shall sell any unwholesome provisions for wholesome provisions, knowing the same to be unwholesome, shall, on conviction, be fined in any sum not exceeding one hundred dollars.

Forcible entry and detainer, &c.

SECT. 70. Every person who shall violently take or keep possession of any lands or tenements, with menaces, force and arms, and without authority of law, shall be deemed guilty of forcible entry, or forcible detainer, as the case may be, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars.

Malicious trespass.

SECT. 71. Every person who shall maliciously or michievously destroy or injure, or cause to be destroyed or injured, any property of another, either real or personal, or any public property, shall be deemed guilty of a malicious trespass, and upon conviction thereof, shall be fined in any sum not exceeding two fold the value of the property destroyed, or of the damage done, to which may be added imprisonment for any term of time not exceeding twelve months.*

Cutting, boxing, or boring trees, &c.

SECT. 72. Every person who shall cut, box, bore, or otherwise injure any tree or sapling, on the land of any other person or persons, or on land belonging to the state, or to any county or township therein, or on any land reserved or granted for the use of schools or seminaries, without a license so to do from the owner or owners thereof, or from other competent authority, or who, without license as aforesaid, shall take away or remove from any such lands any timber, stone, or other valuable article, shall be deemed guilty of a trespass, and, upon conviction thereof, shall be fined in treble the value of such tree or sapling, or property, so as aforesaid taken away or removed.

* An indictment charged the defendant with having, by shooting, maliciously wounded and injured a young mare, the property of *A*, of the value of 80 dollars. *Held*, that the indictment was bad, under the statute, for not stating the amount of damages sustained by the injury complained of. *The State* v. *Peden*, 2 Blackf. 371.

An indictment for a malicious trespass need not state the means used to effect the injury. *The State* v. *Merrill*, 3 Blackf. 346.

An indictment, charging that the defendant unlawfully, maliciously, &c., destroyed, and maliciously caused to be destroyed, a certain quantity of potatoes, &c., cannot be objected to on the ground that it contains two distinct offences. *The State* v. *Kuns*, 5 Blackf. 314.

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PART IV.

Cutting or removing timber, stone, &c. from U. States' lands.

SECT. 73. Every person who shall cut down or remove any timber trees of any kind, or who shall remove any stone, timber, or other valuable article, from any of the public lands, belonging to the United States, for his own use, or for the purpose of selling or making merchandise of said timber or stone, or for the purpose of transporting the same to the state of Illinois, or any other state, shall be deemed guilty of malicious trespass, and upon conviction thereof, shall be fined in five times the value of such timber so cut or removed, or stone or other valuable article so removed for the purpose aforesaid.

Last section modified.

SECT. 74. Nothing contained in the last preceding section shall be so construed as to make actual settlers upon public lands guilty of trespass, who may cut timber, and use stone, for their own private farming purposes, upon the land upon which they may reside.

Erecting mill dam, &c., across a river which has not been surveyed, &c., by the U. States.

SECT. 75. Every person who shall erect, keep up, maintain, or continue, any mill dam or other artificial obstruction, in or across the bed or channel of any navigable stream or river, the bed or channel whereof may not have been surveyed and sold as land by the United States, shall, upon conviction thereof, be fined in any sum not less than three dollars nor more than five hundred dollars, for each and every week such dam or other artificial obstruction may have been kept up, maintained, or continued, as aforesaid. *

Influencing a jury by promises, &c.

SECT. 76. Every person who shall attempt to influence a jury, by promises, persuasions, entreaties, money, entertainments, or the like, or who, being a juror, shall take gain or profit for giving a verdict, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, be imprisoned for any term of time not exceeding six months, and be ever after incapable of serving as a juror.

Conspiracy to procure an indictment.

SECT. 77. If any person shall maliciously, and without probable cause, attempt to cause an indictment to be found against any person or persons, or if two or more persons shall conspire together to cause an indictment to be found against any person or persons, said person or persons so sought to be indicted being innocent, such person or persons so offending shall be fined in any sum not exceeding one thousand dollars, be imprisoned for any term of time not exceeding six months, and be ever after incapable of serving as a juror, giving evidence as a witness, or voting at any election.

Barratry.

SECT. 78. Every person who shall frequently excite and stir up quarrels between or among the citizens of this state, at law or otherwise, shall be deemed a common barrator, and upon conviction thereof shall be fined in any sum not exceeding five

* For the requisites of an indictment on this section, see *Cox* v. *The State*, 3 Blackf. 193.

The provisions of this section are constitutional and valid. Ibid.

The public have a right of way in navigable streams within this state, which right cannot be interrupted by the owners of the banks of such streams. Ibid.

Neither the state legislature nor congress can authorize the erection of obstructions in any navigable stream within the state. Ibid.

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hundred dollars, and be imprisoned for any term of time not exceeding six months.

Usurpation.

SECT. 79. Every person who shall take upon himself to exercise and officiate in any office or place of authority in this state, without being thereunto legally authorized, shall be deemed guilty of usurpation, and upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

Adultery and fornication.

SECT. 80. Every person who shall live in open and notorious adultery or fornication shall, upon conviction thereof, be fined, if a male, in any sum not exceeding three hundred dollars; and if a female, she may be fined as aforesaid, or she may elect to be imprisoned in the county jail for any term of time, which the court or jury trying the cause may determine, not exceeding three months.*

Public indecency.

SECT. 81. Every person who shall be guilty of open and notorious lewdness, or of any grossly scandalous and public indecency, shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars.

Extortion by ferrymen and bridge keepers.

SECT. 82. If any ferryman, ferry-owner, ferry-keeper, or keeper of a toll bridge, shall, in his own person, or by any agent or person in his employment, demand or receive any greater fee or sum for or on account of ferriage or toll than is or may be established or fixed by law or by the proper board doing county business, as the rate or rates of ferriage or toll to be received by such ferryman, ferry-keeper, ferry-owner, or keeper of a toll bridge, or shall neglect to cause the bridge or banks of the creek or river, over or upon which the ferry kept or owned by him or such bridge may be situate, to be kept in good condition and repair, for the passage of men, horses, and loaded wagons, or shall fail or neglect to give all attendance to such ferry or bridge in the day time, according to the laws then in force for the regulation of ferries or bridges, he shall, upon conviction of any one such act of extortion or neglect, be fined in any sum not exceeding forty dollars.

Official negligence.

SECT. 83. Any clerk of the circuit court, constable, coroner, sheriff, justice of the peace, or other officer entrusted with the administration of justice, who shall be guilty of manifest and wilful negligence in the discharge of official duty, to the injury of any person, or who shall in the administration, or under color of his office, be guilty of any oppressive act, shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.†

* If but one of the persons be married, the offence is nevertheless adultery as to both of them. See *The State* v. *Pearce*, 2 Blackf. 318.

It has been held by our supreme court, that if a man have illicit intercourse with his wife's sister, he is not guilty of incest, but of fornication or adultery. See *Dukes* v. *Clark*, 2 Blackf. 20.

An indictment for living in open and notorious adultery, &c., is not sustained by evidence of occasional illicit intercourse, &c. *Wright* v. *The State*, 5 Blackf. 358.

† For the requisites of an indictment against a constable, under this section, see *Stewart* v. *The State*, 4 Blackf. 171.—*The State* v. *Smith*, 5 Blackf. 327.

The state is a person within the meaning of this section, and an averment, therefore, that the offence was an injury to the state is sufficient. Ib.

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PART IV.

Extortion by public officer.

SECT. 84. If any officer shall, unlawfully and by color of his office, demand or receive any money or thing of value, which may not be due to him, or more than may be due, or before the same may be due, he shall be deemed guilty of extortion, and upon conviction thereof shall be fined tenfold the amount so as aforesaid extorted; and in a prosecution under this section, it shall be sufficient to prove the accused an officer de facto.*

Official negligence by clerks of supreme and circuit courts.

SECT. 85. If any clerk of the supreme court, or of any circuit court, shall neglect or refuse to perform, or cause to be performed, any duty required of him by any law of this state, or should any clerk of a circuit court fail or neglect to make a return, according to law, of any election for representative to the congress of the United States, or of governor or lieutenant governor of this state, he shall be deemed guilty of a high misdemeanor, and beside being liable, on conviction thereof on impeachment, to removal from office, shall moreover, on conviction on presentment or indictment, be fined in any sum not exceeding five hundred dollars.

Official negligence in relation to county seminaries.

SECT. 86. Every trustee of any county seminary, or any clerk of a circuit court, county auditor, sheriff, justice of the peace, or other officer, who shall neglect, fail, or refuse to perform any duty required of such officer by the laws in force for the time being on the subject of county seminaries, shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars nor less than five dollars.

Frauds against the revenue.

SECT. 87. Any and all unlawful acts committed by any public officer or other person, and any and every neglect of duty in any public officer, whereby the revenue, either for state or county purposes, may be diminished or defrauded, or whereby the collection or payment thereof into the appropriate treasury may be prevented, hindered, or retarded, shall be deemed a fraud against the revenue; and every officer or other person guilty of any such act, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

Board doing county business failing to appoint assessor, or neglecting other duties in relation to the revenue.

SECT. 88. Any board doing county business failing or neglecting to appoint a competent assessor for such county, or neglecting to appoint any officer necessary in the collection of the revenue of such county, upon the happening of any contingency by which it is made their duty thus to appoint any such officer within their proper county, or neglecting any other duty enjoined upon them by any law relating to the assessment and collection of the state and county revenue, by which such revenue, or any part thereof, shall fail to be collected, every member of such county board so failing or neglecting, shall, in his individual character, be liable, upon conviction thereof, to pay a fine of not less than fifty dollars nor more than five hundred dollars.†

Clerk failing to keep his records

SECT. 89. Any clerk of the circuit court who shall refuse or neglect to keep his records and books, or any or either of them,

* As to the indictment in such case, see *The State* v. *Coggswell*, 3 Blackf. 54.—*Emory* v. *The State*, 6 Blackf. 106.

† See ante, page 185, sec. 31.

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whether appertaining to the circuit court or probate court, in any building previously erected by such board for a clerk's office, or shall neglect or refuse to occupy the same as his office, shall, upon conviction thereof, for each day he may so neglect or refuse, be fined in the sum of ten dollars. in the proper office.

SECT. 90. If any person, when legally required by the assessor, shall refuse to give a list of his capital, money, or other taxable property, or shall fraudulently or intentionally omit to give in any part of his capital or property, liable to taxation, and required by law to be listed and assessed, or shall fix a fraudulent value thereon, every person so offending, shall, upon due conviction thereof, be fined in any sum not exceeding two hundred dollars. Refusing to give list of taxable property.

SECT. 91. Every person who shall carry on or transact any business or occupation without a license therefor, when such license is required by any law of this state, shall, upon due conviction thereof, be fined in any sum not exceeding two hundred dollars, except in the cases specified in the next three sections.* Transacting business without license, &c. Exceptions.

SECT. 92. Every person who shall, in proper person, or by an agent, vend any merchandise which may not be the product of the United States, or of the territories thereof, except tea and coffee, without having such license or permit so to do, as shall at the time be required by law, shall be fined in any sum not exceeding one hundred dollars for each offence.† Vending foreign merchandise without a license, &c.

SECT. 93. Every person, not being licensed according to the laws in force at the time to vend spirituous liquors by retail, who shall barter or sell any spirituous liquor, to be drunk in his or her house, out-house, yard, or garden, or appurtenance thereto belonging, or who shall barter or sell any such spirituous liquor, by a less quantity than a quart at a time, shall be fined in any sum not less than two dollars nor more than twenty dollars.‡ Vending spirituous liquors without license

*See ante, pp. 235, 236, 237.

† The statute imposing a fine upon any person who shall, without having a license as required by law, vend any foreign merchandise within this state, is not in violation of the constitution of the United States. *Beall* v. *The State*, 4 Blackf. 107.

‡ An indictment for retailing spirituous liquors to divers persons without license is bad. It should either contain the names of the persons to whom the sale was made, or state their names to be unknown *The State* v. *Stucky*, 2 Blackf. 289.

An indictment for retailing spirituous liquors need not show the kind of liquor sold. *The State* v. *Gracter*, 6 Blackf. 105. See the same case as to the averments in an indictment for retailing, within the borough of Vincennes, without license by the president and trustees, &c.

It is not necessary, in an indictment for selling liquors without license, to state that the defendant had not a permit from the clerk of the board of county commissioners to sell, &c. *The State* v. *Watson*, 5 Blackf. 155.

Indictment for retailing spirituous liquors without license. The liquor charged to have been sold by the defendant was sold by his wife. *Held*, that the wife, committing the offence without the presence or coercion of her husband, was alone responsible. *Pennybaker* v. *The State*, 2 Blackf. 484. See *Hipp* v. *The State*, 5 Blackf. 149.

A grocer, having a license to retail spirituous liquors, sold his grocery, agreeing that the buyer should have the benefit of the license. *Held*, that the license was not assignable, and that the buyer had no authority under it to retail spirituous liquors. *Godfrey* v. *The State*, 5 Blackf. 151.

Port wine is not a spirituous liquor within the meaning of the statute. *The State* v. *Moore*, 5 Blackf. 118.

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PART IV.

Exhibition of shows, &c., without license.

SECT. 94. Every person who shall, in proper person, or by an agent, show or exhibit any menagerie, caravan, animal, or collection of animals, circus, theatre, or any natural curiosity, or wax works, or figures, or any feats in tumbling, sleight of hand, or rope or wire dancing, for gain, without being licensed pursuant to the law in force at the time so to show or exhibit, shall be fined in any sum not exceeding twenty dollars.

Selling or giving spirituous liquors to a minor under 18 years, or to an intoxicated person.

SECT. 95. If any person licensed by any law in force at the time to vend spirituous liquors by retail, shall knowingly sell or give any spirituous liquor to any minor under the age of eighteen years, without the consent of his parent or guardian, or shall sell or give any spirituous liquor to an individual who is at the time in a state of intoxication, every such person so offending shall be fined in any sum not less than two nor more ten dollars.*

Selling or giving spirituous liquors to an Indian.

SECT. 96. No person or persons, of any description whatever, whether associated in company or individually, shall sell, give, barter, or exchange, or dispose of in any way, either directly or indirectly, any spirituous or intoxicating liquor, to any Indian or Indians, within this state; and should any person or persons be guilty of a violation of the provisions of this section, he, she, or they, so offending shall, upon conviction thereof, be fined for each offence in any sum not less than five dollars nor more than fifty dollars, and may be imprisoned at the discretion of the jury who may try the cause, for any term of time not exceeding ten days.†

Tavern keeper taking, &c., greater price than fixed in his schedule of rates, or neglecting to keep up such schedule.

SECT. 97. If any licensed tavern keeper shall, directly or indirectly, ask, demand, or receive any greater price or higher rates for any article furnished in the way of his business, than may be fixed and published by him in his schedule of tavern rates, or who shall knowingly neglect for one whole day to keep up, in the most public room in his tavern, a fair list of the aforesaid rates, so by him fixed and published, he or she so offending shall be fined in any sum not less than five dollars nor more than fifty dollars.

Gaming.

SECT. 98. Every person who shall, by playing or betting at or upon any game or wager whatsoever, either lose or win any sum of money or article of value, shall, upon conviction thereof, be fined in any sum not exceeding fifty dollars.‡

* An inn-keeper is not liable to be indicted for the offence, committed in his absence and without his knowledge, by his barkeeper, of selling spirituous liquor to an intoxicated person. A master, as a general rule, is not subject to punishment by indictment for the offences of his servant, unless they were committed by his command, or with his assent. *Hipp* v. *The State*, 5 Blackf. 149.

† See *The State* v. *Jackson*, 4 Blackf. 49.

‡ The winning of any sum of money, however small, at a game with cards, is an offence of which the circuit court has exclusive jurisdiction. *The State* v. *Albertson*, 2 Blackf. 251.

An indictment for gaming need not state the name of the game played, nor the name of the person with whom the bet was made, his name being alleged to be unknown. *The State* v. *Maxwell*, 5 Blackf. 230. See *The State* v. *Bougher*, 3 Blackf. 307.

An indictment for unlawfully winning of several persons (naming them) and others,

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ARTICLE 2.

Gaming in a tavern or grocery.

SECT. 99. Every person who shall play at any game or games, for money, or other valuable consideration, or who shall bet on the hands or sides of such as do play, at a tavern or place licensed to vend spirituous liquors by retail, or in any out-house or appendage of the same, shall, on conviction thereof, be fined in any sum not exceeding seventy dollars nor less than ten dollars, and be recognized with sufficient surety for his good behaviour for one year, which recognizance shall be forfeited by a second offence within the time aforesaid. *

Gaming house.

SECT. 100. If any person or persons shall keep, or suffer his or her house, building, room, arbor, booth, shed, or tenement, to be used and occupied for gaming, or if any person or persons, being the owner or owners of any building, room, arbor, booth, shed, or tenement, shall rent the same to be used and occupied for gaming, the person or persons so offending shall, on conviction, be fined in any sum not less than fifty dollars, nor more than five hundred dollars. †

Evidence thereof.

SECT. 101. And it shall be sufficient evidence that any such house, building, room, arbor, booth, shed, or tenement, specified in the last preceding section, was rented for the purpose of gaming therein, if the owner or owners thereof, lessor or lessors, knew that their lessee or lessees used and suffered any gaming therein, and such owner or owners, lessor or lessors, made no immediate complaint thereof, with a view to a criminal prosecution, or took no other sufficient means to prevent or restrain the same. ‡

Tavern keeper and retailer of spirituous liquors suffering gaming, &c.

SECT. 102. Every tavern keeper, or retailer of spirituous liquors, who shall suffer any game or games prohibited by this article, to be played in his or her tavern, ordinary, or grocery, or in any room or out-house appendant thereto, shall, upon conviction thereof, be fined in any sum not less than fifty nor more than two hundred dollars, and shall forfeit his or her license as a tavern or grocery keeper, and not be re-licensed for one year from the date of such conviction. §

a certain quantity of beef, &c., was held bad for not naming all the persons with whom the bet was made, or stating that the names not given were unknown. *The State* v. *Irvin*, 5 Blackf. 343.

An indictment for betting on the result of an election must state for what purpose the election bet on was held; that is, whether it was for president of the United States, for governor of the state, &c. *Bellair* v. *The State*, 6 Blackf. 104.

An indictment charging the defendant with winning the sum of five dollars by a wager, &c., is not sustained by proof that he won a promissory note for five dollars of the person with whom he bet. *Tate* v. *The State*, 5 Blackf. 174.

* In an indictment for gaming at a tavern or any other place, it is unnecessary to state the particular game played. *The State* v. *Bougher*, 3 Blackf. 307. See *The State* v. *Dole*, 3 Blackf. 294.

† Whether the circumstance of a defendant's permitting a roulette to be gambled upon once in his house, is sufficient evidence to support an indictment against him for keeping a room for gambling, is a proper question for the jury. *Armstrong* v. *The State*, 4 Blackf. 247.

‡ See post, chapter 54, section 85.

§ In an indictment for permitting gaming in a licensed grocery, it is not necessary to set forth the name of the game that was played. *The State* v. *Dole*, 3 Blackf. 294. See *The State* v. *Bougher*, 3 Blackf. 307.

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PART IV.

Suffering horse to run or riding horse race.

SECT 103. Any person who shall knowingly suffer his horse, mare, or gelding, to be run in what is commonly called a "horse race," along any public highway in this state, and any person who shall act as rider in any such race so run as aforesaid, on being duly convicted thereof on presentment or indictment, shall be fined in any sum not less than five and not more than fifty dollars.

Selling lottery tickets, drawing lottery, etc.

SECT. 104. If any person or persons shall sell any lottery ticket, or share in any lottery or scheme for a division of property, to be determined by chance, or shall make or draw any lottery or scheme for a division of property as aforesaid, not authorized by law, such person or persons, on conviction thereof, shall be fined in any sum not exceeding five hundred dollars.

Removing land marks, etc.

SECT. 105. If any person shall wilfully or mischievously remove any monument of stone, wood, or other durable material, erected for the purpose of designating the corner or any other point in the boundary of any lot or tract of land, or shall wilfully and maliciously or mischievously deface or alter the mark or marks upon any tree, post, or other monument, made for the purpose of designating any point, course, or line in the boundary of any lot or tract of land, or shall wilfully cut down or remove any tree, post, or monument upon which any such mark or marks shall be made for such purpose, with the intent to destroy such mark or marks, he, she, or they so offending, upon conviction, shall be punished by imprisonment in the county jail for any time not exceeding six months, or by fine not exceeding two hundred dollars.

Setting woods or prairies on fire.

SECT. 106. If any person shall wilfully and maliciously set on fire, or cause to be set on fire, any woods or prairies, or other grounds within this state, other than his or her own, or shall intentionally permit the fire to pass from his or her own prairie or grounds to the injury of any other person or persons, every person so offending shall, on conviction thereof, for every such offence, be fined in a sum not exceeding fifty dollars, and shall be liable to the action of the party injured for any damages which such party may have sustained in consequence of such fire.

Carrying concealed weapons

SECT. 107. Every person not being a traveller, who shall wear or carry any dirk, pistol, sword in a cane, or other dangerous weapon, concealed, shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars.*

Bringing paupers within this state, etc.

SECT. 108. Every person who shall knowingly bring within this state, a pauper or paupers, with the intention of making him, her, or them a charge upon any of the counties in this state, shall, upon conviction on presentment or indictment, be fined in any sum not exceeding five hundred dollars, and stand chargeable with the support of such pauper or paupers.

Administering drugs, etc. to procure abortion.

SECT. 109. Every person who shall wilfully administer to any pregnant woman any medicine, drug, substance, or thing

* An indictment for carrying a pistol concealed need not state that the pistol was loaded. *The State* v. *Duzan*, 6 Blackf. 31.

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whatever, or shall use or employ any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve her life, shall, upon conviction, be punished by imprisonment in the county jail for any term of time not exceeding twelve months, and be fined in any sum not exceeding five hundred dollars.

Disturbing religious society or other lawful public meeting.

SECT. 110. If any person shall interrupt, disturb, or molest any religious society or any member thereof, when met or meeting together for public worship, or shall sell or give away any spirituous liquor at any booth, wagon, or open place within one mile of any collection of a portion of the citizens of this state, convened for the purpose of worship, or shall interrupt, disturb, or molest any collection of the people convened for any lawful purpose, or shall make any contention or disturbance at any public house, court, election, or other lawful public meeting, such person shall, upon conviction thereof be fined in any sum not exceeding ten dollars nor less than one dollar.*

Disinterring dead bodies.

SECT. 111. Every person who shall, without the consent of the near relatives of a deceased person, or without the consent of such deceased person being had in his or her life time, remove the dead body or corpse of such deceased person, or any part thereof, from interment in any public or private burying ground, shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.†

Assisting marriage, &c. between whites and negroes, &c.

SECT. 112. Every person who shall knowingly aid, counsel, abet, or assist in any way or manner whatever in any marriage between any negro and white person, or between any person having one eighth part or more of negro blood and any white person, shall, upon conviction thereof, be fined in any sum not less than one hundred dollars nor more than one thousand dollars.

Fraudulent conveyances, &c.

SECT. 113. Every person who shall be a party to the sale and delivery of any goods or chattels, or to any bond, bill of sale, assignment, grant, gift, deed, or other conveyance of any estate or interest in land, or any rents or profits issuing therefrom, or of any goods, chattels, or things in action, made or executed with a view to defraud prior or subsequent purchasers, or to hinder, delay, or defraud creditors, and every person being privy to or

* An indictment for disturbing a religious society, etc., may charge the defendant, in the same count, with disturbing the society and its members. — Such indictment need not state the name of the society. *The State* v. *Ringer*, 6 Blackf. 109

† The indictment for the disinterment of a corpse need not allege the disinterment to be unlawful. *The State* v. *McClure*, 4 Blackf. 328.

A person without being actually present at the unlawful disinterment of a dead body, may be found guilty of the offence, if, with the intention of giving assistance, etc., he be near enough to afford it should it be needed. Testimony tending to prove the defendant's co-operation, etc., should be referred to the jury. *Tate* v. *The State*, 6 Blackf. 110.

Such offence consists not merely in the removal of the dead body, but in its removal without the consent of the deceased given in his life time, or of his near relatives given since his death. Ibid.

An indictment in such case, charging the defendant with removing from its grave a certain deceased child of *N. H. Burke*, "that had yet no name given to it," without the consent, etc. is sufficient. Ibid.

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PART IV.

knowing of such sale, conveyance, or assignment, who shall willingly put the same in use, as having been made in good faith, shall, upon conviction, be imprisoned in the county jail for any term of time not exceeding twelve months, and be fined in any sum not exceeding two hundred dollars.

Discovery of fraud, &c. by a party not evidence against him.

SECT. 114. The admission or discovery of any fraud specified in the last preceding section, under oath, in any civil suit by any person, shall in no case be admitted as evidence against him or her in any criminal prosecution under the last preceding section.*

Giving free papers or assisting slaves to escape, &c.

SECT. 115. If any person, without proper authority, shall give to any one owing service in any state or territory within the United States, a certificate or other testimonial of emancipation, or shall knowingly harbor or employ any such one, owing service as aforesaid, or held as a slave, who may have come into this state without the consent of his or her owner, or shall encourage or assist any such one to desert or not go with his or her owner, or shall use any violence or other means to prevent, let, or hinder any person in lawfully recovering any fugitive slave or person owing service, such person so offending, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and be liable for damages to any person or persons injured by any of the said acts.

Obstructing process; rescue, &c.

SECT. 116. Every person who shall obstruct the execution of any legal process, or who shall forcibly free any person from legal arrest, knowing such person to be under arrest, shall, upon conviction thereof, be fined in any sum not exceeding ten thousand dollars, or be imprisoned for any term of time not exceeding six months.

Officer permitting prisoner to escape through negligence, &c.

SECT. 117. If any officer, whose duty it may be to have the custody of prisoners, charged with or convicted of any offence against any law of this state, shall negligently suffer any prisoner, so as aforesaid charged with or convicted of an offence, to escape out of his custody, the officer so offending shall be fined in any sum not exceeding ten thousand dollars.

Aiding an attempt to escape, &c.

SECT. 118. Every person who, by any means whatever, shall aid or assist any prisoner lawfully committed to or detained in any jail or other place of confinement for any criminal offence, in an attempt to escape therefrom, or who shall convey into such jail or place of confinement, any disguise, instrument, arms, or other thing proper or useful to facilitate the escape of any prisoner so committed, with intent to facilitate the escape of such prisoner, whether such escape be attempted or not, shall, upon conviction, be punished by imprisonment in the county jail for any term of time not exceeding twelve months, or be fined in any sum not exceeding five hundred dollars, or by both such fine and imprisonment.

Failing to assist officer, &c.

SECT. 119. Every person called upon or required by any sheriff or his deputy, or by any coroner, constable, or any conser-

* See ante, pp. 848, 849.

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vator of the peace, to assist him in the execution of his office, or in the service of any process by him to be served, and failing to obey when so called, shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars, unless he show a valid cause for not obeying. ARTICLE 3.

ARTICLE III.

Of petty offences, punishable by fine only, before a justice of the peace.

SECTION
120. Assault.
121. Ferrying without license.
122. Vending obscene books, &c.
123. Sabbath breaking.
124. Tavern keepers, &c. selling liquors on Sunday.
125. Profane swearing.
126. Playing long bullets, &c.

SECT. 120. Every person who shall unlawfully assault another shall be fined in any sum not exceeding three dollars. Assault.

SECT. 121. Every person, other than a licensed ferryman, who may for fee or reward, ferry any person over any creek or river within two miles of any public ferry, licensed as such and established on such creek or river, shall be fined in the sum of three dollars for every offence. Ferrying without license.

SECT. 122. If any person shall vend, or cause to be vended, any playing cards, or any obscene book, pamphlet, or print, he shall, on conviction thereof, be fined in any sum not less than one dollar nor more than three dollars for every such pack of cards, book, pamphlet, or print vended. Vending obscene books, &c.

SECT. 123. If any person of the age of fourteen years or upwards shall be found on the first day of the week, commonly called Sunday, rioting, hunting, fishing, quarreling, or at common labor, works of charity and necessity only excepted, such person shall be fined in any sum not less than one dollar nor more than three dollars; but nothing herein contained shall be construed to affect such as conscientiously observe the seventh day of the week as the Sabbath, travellers, families removing, keepers of toll bridges attending the same, or ferrymen acting as such. Sabbath breaking.

SECT. 124. Every tavern keeper or other person who may barter or sell any spirituous liquor to any person on Sunday, except to travellers, or in cases of sickness, shall, upon conviction thereof, be fined in any sum not exceeding three dollars. Tavern keepers, &c. selling liquors on Sunday, &c.

SECT. 125. Every person of the age of fourteen years or upwards, who shall profanely swear, aver, curse, or imprecate, by or in the name of God, Jesus Christ, or the Holy Ghost, shall be fined for each offence not less than one dollar nor more than three dollars; but the fines imposed upon any one person for violations of this section, committed on one day, shall not exceed ten dollars. Profane swearing.

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Playing long bullets, &c.

SECT. 126. Every person who shall play bullets, along or across any highway or the street of any town or village, or shall run horses or shoot at a mark within the limits of such town or village, or shoot along or across any such street, shall, upon conviction thereof, be fined in any sum not exceeding three dollars.

CHAPTER 54.

OF THE LIMITATION OF PROSECUTIONS: OF THE GRAND JURY AND INDICTMENTS: PROCESS AND RECOGNIZANCES: WITNESSES: TRIALS: JUDGMENTS: AND GENERAL PROVISIONS RESPECTING PROCEEDINGS AND TAKING A CHANGE OF VENUE IN CRIMINAL CASES.

ARTICLE 1. Of the limitation of prosecutions.
ARTICLE 2. Of the grand jury and indictments.
ARTICLE 3. Of process and recognizances.
ARTICLE 4. Of witnesses.
ARTICLE 5. Of trials and the matters relating thereto.
ARTICLE 6. Of judgment and the execution thereof.
ARTICLE 7. General provisions.
ARTICLE 8. Of taking a change of venue in ciminal cases.

ARTICLE 1.

Of the limitation of prosecutions.

SECTION
1. Limitation where the fine does not exceed three dollars.
2. Treason, murder, arson, manstealing, horsestealing, and forgery not limited.
SECTION
3. Offences punished by fine only, limited to one year.
4. Other offences limited to two years.
5. Exceptions.

Limitation where the fine does not exceed three dollars.

SECTION 1. Prosecutions against any person for an offence, the penalty for which is a fine which cannot exceed three dollars, shall be commenced within thirty days after the commission of the offence.

Treason, murder, arson, manstealing, horsestealing, and forgery not limited.

SECT. 2. Prosecutions for the crimes of treason, murder, arson, burglary, manstealing, horsestealing, and forgery may be commenced and prosecuted at any period after the commission of the offence.

Offences punished by fine only, in circuit court, limited to one year.

SECT. 3. All prosecutions for offences, the punishment of which is fine only, and of which the circuit courts have jurisdiction, shall be commenced within one year after the commission of the offence, and not afterwards.

Other offences limited to two years.

SECT. 4. All prosecutions for crimes and offences not specified or included in the provisions of the last three preceding

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sections, shall be commenced within two years next after the commission of the offence, and not afterwards. ARTICLE 2.

SECT. 5. But if the person or persons against whom any prosecution embraced in the provisions of the last preceding section may be instituted, shall not have been an inhabitant or inhabitants, or usually a resident or residents of the state within and during said period of two years, such prosecution may be instituted by proceedings before a justice of the peace, or by indictment, at any time within two years next after such person or persons may have become an inhabitant or inhabitants of this state, or may be found within the jurisdiction of the same. Exceptions.

ARTICLE II.

Of the grand jury and indictments.

SECTION
6. Challenge to array of grand jurors not allowed.
7. Foreman of grand jury may administer oaths.
8. Court may, for cause, remove foreman and appoint another.
9. Grand jury dismissed may be recalled etc.
10. Full jury, in such case, not attending, their number how completed.
11. Prosecutions to be by presentment or indictment where offence was committed.
SECTION
12. Case of wound in one county and death in another.
13. Counts in indictment in case of murder and manslaughter.
14. Indictment for murder in the first degree, how jury may find.
15. Same, in case of indictment for murder in the second degree.
16. Indictments, how endorsed by foreman of the grand jury.
17. Cases in which indictments shall not be quashed for technical defects, etc.

SECT. 6. No challenge to the array of grand jurors shall be allowed in any case. Array of grand jurors not challenged.

SECT. 7. The foreman of the grand jury shall have power to administer all necessary oaths and affirmations to witnesses who shall appear before the grand jury for the purpose of testifying to any matters of which such grand jury may have cognizance. Foreman of grand jury may administer oaths.

SECT. 8. The court may remove the foreman of the grand jury, at any time, for sufficient cause, and appoint another in his place. Court may remove foreman, etc.

SECT. 9. When the grand jury attending any court shall have been dismissed before the final adjournment of the court, they may be summoned to attend again in the same term, at such time as the court shall direct, for the despatch of any business which may come before them. Grand jury dismissed may be recalled, etc.

SECT. 10. If, in such case a full jury do not attend, the court may complete their number from bystanders who are competent to serve as jurors, and by causing such jury to be sworn and charged as in the first instance. Full jury not attending, their number how completed.

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Prosecutions to be by presentment or indictment in the county where offence was committed.

SECT. 11. All prosecutions in the circuit courts, under any statute of this state, shall be instituted upon presentment or indictment found by the grand jury of the county within which the offence may have been committed.

Case of wound in one county and death in another.

SECT. 12. But if any mortal wound shall be given, or injury or other violence be inflicted, or any poison be administered in one county by means whereof death shall ensue in another county, the offence may be prosecuted and punished in either county.

Counts in indictment in case of murder and manslaughter.

SECT. 13. An indictment may contain counts for the crimes of murder in the first and second degrees and for manslaughter, or for any two of such crimes.

Indictment for murder in first degree, how jury may find.

SECT. 14. Upon an indictment for murder in the first degree, the jury may find the defendant not guilty of the crime in the degree charged in the indictment, and may find him guilty of such murder in the second degree; or they may find him guilty of manslaughter.

Same in indictment for murder in the second degree.

SECT. 15. And, also, when the indictment is for murder in the second degree, the jury may find the defendant not guilty of the crime in the degree charged, and may find him guilty of manslaughter.

Indictments how endorsed by foreman of grand jury.

SECT. 16. Presentments and indictments found by the grand jury, shall be endorsed by the foreman—"A true bill—A B, Foreman," and shall be returned into court by the grand jury, and filed by the clerk.*

Cases in which indictments shall not be quashed for technical defects, &c.

SECT. 17. No indictment for any offence punishable by fine, or by fine and imprisonment in the county jail only, shall be quashed or deemed invalid for any merely formal or technical defects or omissions, not affecting the substance of the charge alleged, nor tending to the prejudice of the defendant on his trial.†

* A judgment against a defendant, in a criminal cause, will not be reversed because the record does not show that the indictment was endorsed "a true bill" by the foreman of the grand jury. *Townsend* v. *The State*, 2 Blackf. 151.—The objection must be made in the circuit court. Ibid.

The record in the case of an indictment need not show that the indictment was signed by the prosecuting attorney, nor that there was a foreman of the grand jury. *McGregg* v. *The State*, 4 Blackf. 101.

† An indictment concluding "against the peace of the state," may be so amended by the prosecuting attorney, with the leave of the court, as to read "against the peace and dignity of the state." *Cain* v. *The State*, 4 Blackf. 512

The description of the defendant in an indictment, by the addition of his degree or mystery, and place of residence, is not necessary in this state. *The State* v. *McDowell*, 6 Blackf. 49.

The description of an offence in an indictment, in the language of the statute defining it, is sufficient. *The State* v. *Bougher*, 3 Blackf. 307.

An indictment charging a person who has taken up an estray, with not complying with the provisions of the statute on the subject, must state the particular acts which the defendant has omitted to perform. *Dixon* v. *The State*, 4 Blackf. 312.

The indictment charged that the defendant did feloniously *stal*, take, and carry away one watch of the value of five dollars, &c. *Held*, that the use of the word *stal* was not a sufficient cause to arrest the judgment. *Wills* v. *The State*, 4 Blackf 457.

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ARTICLE III.

Of process and recognizances.

SECTION
18. Process; issue and return thereof.
19. Same subject.
20. Process may issue to any county in the state.
21. Bailable offences.
22. Order of court for amount of bail.
23. If no such order, judge may order bail, &c.
24. Attachments, and bail thereon
25. Recognizances in open court.
26. Officers executing process may take recognizances.
27. Bail may be required to justify, &c.
28. Officer taking recognizances shall return the same to clerk's office; clerk shall file and record the same.

SECTION
29. Person may take recognizance of person imprisoned.
30. Bail may surrender principal in court;
31. Or to sheriff.
32. Bail, on surrender, shall be exonerated, except as to costs.
33. Discretionary power given to the court as to amount of judgment on forfeited recognizance.
34. Neglect, &c. of clerk, &c. not to defeat action, &c. on forfeited recognizance.
35. If omission, &c. to file or record recognizance, same may be recorded, &c.

Process; issue and return thereof.

SECT. 18. When an indictment is found and returned by the grand jury, the court may direct process for the body of the defendant, if he be not in custody, to issue, returnable forthwith after service thereof, or at such time as the court may direct in such term; or if no such order be made, the clerk shall, within twenty days after the end of the term, docket the indictments for the next term, and issue process to the sheriff or other proper officer of his county.*

Same subject.

SECT. 19. All process to arrest the defendant to answer any criminal accusation, unless otherwise ordered by the court in special cases authorized by law, shall be returnable on the first day of the term next after such process shall be issued.

Process may issue to any county.

SECT. 20. Process on an indictment may issue to any county in the state, and be executed by the sheriff or other proper officer of such county, and returned to the court whence it was issued, whenever ordered by the court in term, or any judge thereof in vacation, or directed by the prosecuting attorney.†

Bailable offences.

SECT. 21. All persons are bailable by sufficient sureties, except for capital offences, when the proof is evident or the presumption great; and excessive bail shall not be required.

Order of court for amount of bail.

SECT. 22. It shall be the duty of the circuit court, at each term thereof, to make an order for the amount in which persons indicted shall be held to bail; and it shall be the duty of the clerk, on issuing process, to endorse thereon the amount of bail thus required.

If no such order, judge may order bail, &c.

SECT. 23. If no such order of bail shall have been made, the officer to whom such writ is directed may present the same, if the offence be bailable, to any associate judge of the county,

* See post, section 88 of this chapter.

† See ante, p. 648, sec. 13.

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either before or after the arrest of the defendant; and such judge shall endorse thereon the amount in which such officer shall take bail of such defendant, and bail may be taken by the officer accordingly.

Attachments and bail thereon.

SECT. 24. When writs of attachment are returnable after the end of the term at which they are directed to issue, the court shall order the amount of bail required of the defendant to be endorsed thereon, as in the case of other process, or if such order be not made, the same may be endorsed as provided in the last preceding section.

Recognizances in open court.

SECT. 25. Recognizances in criminal proceedings, taken in open court, shall be spread on the order book, and the bail shall be approved in such manner as the court shall direct.

Officers executing process may take recognizances.

SECT. 26. All officers executing mesne process or writs of attachment against the body of any defendant named therein, are hereby empowered to take recognizances for the appearance of every such defendant, to answer the charge or matter specified in such process or writ, and shall approve the bail therein.

Bail may be required to justify, &c.

SECT. 27. Every court, justice of the peace, or other officer taking any recognizance, may administer all oaths and put all necessary interrogatories for determining the sufficiency of any bail who may be offered.

Officer taking recognizance shall return the same to the clerk's office.

SECT. 28. When any recognizance is taken by any judge of any court, justice of the peace, or other officer, such judge, justice, or officer shall certify under his hand, and return such recognizance to the office of the clerk of the court before which the defendant named therein is required to appear; and as soon as such recognizance is thus returned, the clerk of such court shall file the same and record it at length upon the order book; and when thus recorded, such recognizance shall be deemed, from the time of taking the same, to be of the same force and effect as recognizances taken of record in open court.*

Clerk shall file and record the same.

Person imprisoned, sheriff may take recognizance.

SECT. 29. When any person is imprisoned on any criminal charge for want of bail, and the amount of bail required is specified in the warrant of commitment, or on the writ by which such person is thus imprisoned, the sheriff may take and return a recognizance for his appearance, and approve the bail therein, at any time, in like manner as such sheriff might take and return any such recognizance on an arrest by him before commitment.

Bail may surrender principal in court;

SECT. 30. The bail for the appearance of any person, to answer any criminal accusation, or on attachment, at any time before final judgment is rendered upon scire facias on such recognizance, may surrender his principal in open court.

Or to the sheriff.

SECT. 31. Such bail may also surrender the principal to the sheriff at any time before such judgment, who shall be bound

* A *scire facias* on a recognizance not taken in a court of record, should show by whom it was taken and filed, and that the person who took and filed it was authorized to do so. *Andress* v. *The State*, 3 Blackf. 108.—The *sci. fa.* must also show that the recognizance was duly acknowledged before such person, and that it was filed and recorded in the proper court. *Lang* v. *The State*, 3 Blackf. 344.—*Davis* v. *The State*, 5 Blackf. 374. See *Wellman* v. *The State*, 5 Blackf. 343, and post, section 35, of this chapter.
As to how far a recognizance shall bind lands, see ante, page 455, section 10.

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to receive him into his custody, and detain him until legally discharged, if such bail deliver with such principal a certified copy of the recognizance; and such sheriff shall acknowledge such surrender in writing.*

Bail on surrender shall be exonerated, Except as to costs.

SECT. 32. Upon any such surrender being made, the bail shall be exonerated and discharged from all further liability on said recognizance, except that such surrender, if made after the forfeiture of the recognizance, shall not exonerate and discharge such bail from the amount of forfeiture incurred, but upon the payment of such costs of the forfeiture and proceedings by scire facias as may be adjudged by the court.

Discretionary power given to the court as to amount of judgment on forfeited recognizances.

SECT. 33. When any action by scire facias or otherwise is brought on behalf of the state against a principal or surety in any recognizance entered into either by a party or a witness in any criminal prosecution, where the penalty of such recognizance has been adjudged forfeited, the court may, on application of the party defendant, remit any part or the whole of such penalty, according to the circumstances of the case and the situation of the party, and upon such terms and conditions as to such court shall seem just and reasonable, and may award execution accordingly.

Neglect, etc. of clerk, etc. not to defeat action etc., on recognizance.

SECT. 34. No action or proceedings on a recognizance, by scire facias or otherwise, shall be barred or defeated, nor shall judgment thereon be defeated or arrested by reason of any neglect or omission to note or record the same or any matters connected therewith, nor by reason of any defect in the form of the recognizance, if it sufficiently appear from the tenor thereof and from the proceedings or otherwise, at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken, was authorized by law to require and take such recognizance, and that such party was in default in violation of the condition of his recognizance.†

* If the principal be recognized by a justice of the peace for his appearance at the circuit court, &c., the sureties may surrender him to the sheriff, but cannot discharge themselves by surrendering him to the justice. *Stegars* v. *The State*, 2 Blackf. 104.

† The condition of a recognizance, that a person shall appear at the then next term of the circuit court and from day to day, is a condition for his appearance on the first day of the term and on every other day thereof, unless sooner discharged. *Wilson* v *The State*, 6 Blackf. 212.

The date of a recognizance for a defendant's appearance in court, may be the day on which he is recognized to appear. *The State* v. *Bradley*, 1 Blackf. 83.

If a person charged with felony, voluntarily appear before an associate judge, and enter into a recognizance, with sureties, for his appearance, etc., the recognizance is valid, though the affidavit on which it is founded was made before a justice of the peace. *Adair* v. *The State*, 1 Blackf. 200.—See ante, page 651, section 32.—*McCarty* v. *The State*, 1 Blackf. 338.

Where the recognizance is for the principal's appearance on the first day of the term, his failure to attend on that day is a forfeiture; if, however, no indictment be found against him and he appear during the term, the recognizors may be discharged; but if he do not appear they will continue liable. *Adair* v. *The State* 1 Blackf. 200.—See *The State*, v. *Cooper*, 2 Blackf. 226

A recognizance entered into by the sureties alone, is valid. The recognizance is entered into only by the sureties when the party required to enter into such recognizance is a feme covert or an infant. See *Minor* v. *The State*, and *note*, 1 Blackf. 236, 237.

If a scire facias on a recognizance entered into by two persons jointly, issue against one of them only, the omission of the other can only be taken advantage of by a plea

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Omission to record, etc., recognizance, same may be recorded, etc.

SECT. 35. Any omission of the clerk to note the filing of a recognizance, or to record the same before or after forfeiture, shall not impair the right to have execution thereon by scire facias, if such recognizance be recorded before execution is awarded.

ARTICLE IV.

Of witnesses.

SECTION

36. Witnesses may be compelled to attend, etc.
37. Defendant entitled to process for witnesses without fee, etc.
38. Prosecuting attorney may have witnesses subpœnaed for grand jury in vacation.
39. Depositions of witnesses may be taken in certain cases.
40. Notice, etc., thereof.
41. Depositions de bene esse.
42. Witnesses.—Who compelled to testify in cases for gaming.
43. Same subject.
44. Person against whom offence committed, competent witness.
45. Cases in which persons of skill may be called.
46. Same subject.
47. Cashier of bank.
48. Witness may be recognized.

Witnesses compelled to attend, etc.

SECT. 36. Witnesses on behalf of the state, or of any defendant in a criminal prosecution, may be compelled to attend and testify, if they have been duly subpœnaed, without their fees being paid or tendered.

Defendant entitled to process of subpœna.

SECT. 37. The defendant in any criminal prosecution, shall be entitled to process of subpœna for his witnesses, and to due service thereof, without any fee or charge, unless he shall be

in abatment, and the plea in such case must show that the party not sued is living. *Wilson* v. *The State*, 6 Blackf. 212.

If the recognizance be several or joint and several, one scire facias may issue against all the recognizors, and separate executions may be had against each of them for the amount of his obligation, following the nature of the recognizance. *Adair* v. *The State*, 1 Blackf. 200.—*Minor* v. *The State*, 1 Blackf. 236.—A scire facias against two of three recognizors bound severally is erroneous. *Wellman* v. *The State*, 5 Blackf. 343.

Scire facias on recognizance. Plea, that the principal had appeared in court, etc., and pleaded not guilty to the indictment; that the court, having heard the evidence and dismissed the jury, discharged him; and afterwards he had been called and the recognizance declared forfeited. *Held*, that the plea was good, and that the averment that the principal had been discharged was essential to its validity. *Lyons* v. *The State*, 1 Blackf. 309.

If a recognizance contain the words "to be void if default should be made in the condition," it does not affect the validity of the recognizance, they being repugnant to the object of the obligation and the other parts of the condition. *McCarty* v. *The State*, 1 Blackf. 338.

See ante, page, 693, sections 138, 139, 140, 141; and also section 34 of this chapter.

The rendering of judgment for the amount of the recognizance at the time of declaring the same forfeited, is mere surplusage, and cannot be assigned for error. *Kearns* v. *The State*, 3 Blackf. 334.—A scire facias may issue without the entry of a judgment. *Andress* v. *The State*, 3 Blackf. 108.

If the defendant in scire facias on a recognizance wish to deny the forfeiture of the recognizance, he must plead nul tiel record. *Wilson* v. *The State*, 6 Blackf. 212.

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duly convicted of the offence charged and adjudged to pay the state her costs. ARTICLE 4.

Prosecuting attorney may have witnesses subpœnaed for grand jury.

SECT. 38. The prosecuting attorney in vacation may have subpœnas issued and served before the term of the court, for witnesses to appear at such term and testify before the grand jury.

Depositions of witnesses may be taken in certain cases.

SECT. 39. Any person held to answer an indictment may, by leave of the court first obtained, take depositions of witnesses residing out of the state, to be read in evidence on the trial of such indictment; but before any such leave shall be granted, the defendant shall enter of record on the order book, his assent that depositions of witnesses residing out of the state may be taken on behalf of the state.

Notice thereof.

SECT. 40. Such depositions, both on behalf of the state and such defendant, shall be taken with like notice to the prosecuting attorney and the defendant respectively, as in the case of depositions to be read in a civil action, and shall be certified filed and published, or suppressed by the court, or read in evidence by the proper party, under the like rules and regulations of law.*

Depositions de bene esse.

SECT. 41. After an indictment shall be found against any defendant, he may, on the same terms as above provided, on the order of the court, have depositions taken de bene esse, in like manner and under like circumstances, and with the same effect in all respects, as in civil actions.

Witnesses in case of gaming

SECT. 42. Any person legally called to give evidence against another for gaming, shall be deemed a competent witness to prove such gaming, although such person may have been concerned as a party; and may be compelled to testify as in the case of other witnesses.

Same subject.

SECT. 43. Every person thus required or compelled to testify, shall not be liable to indictment or conviction for any gaming concerning which he shall testify; but shall be exonerated and acquitted from all punishment, fines, and penalties therefor.

Person against whom offence committed, a competent witness.

SECT. 44. Any person against whom an offence may have been committed, shall be a competent witness on the trial of the person or persons indicted for such offence.

Cases in which persons of skill may be called.

SECT. 45. Persons of skill may be called to testify in prosecutions under the laws of this state as also in civil cases, whether any note or notes, bill or bills, draft, or certificate of deposite, are genuine or otherwise, leaving in all cases, the credibility of such persons to the jury.

Same subject.

SECT. 46. But whenever it is in question whether any such note, bill, draft, or certificate is genuine or not, three such persons at least shall be required to testify in such case, to the point or points in question; except on an indictment for a larceny of any bank note, bill, draft, or certificate of deposite, in which case the value thereof may be established by the testimony of any skilful person or persons.

*See ante, pp. 720 to 725.

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Cashier of bank.

SECT. 47. In all cases coming within the provisions of the last two preceding sections, the single evidence of the cashier of the bank by which any note, bill, draft, or certificate purports to have been made or issued, may be received as sufficient.

Witness may be recognized.

SECT. 48. The court, for good cause shown, may require a witness to enter into a recognizance, without sureties, to appear at the same or the succeeding term, and testify as a witness in a criminal cause or proceeding, or in default thereof to be committed.*

ARTICLE V.

Of trials and the matters relating thereto.

SECTION

49. Cases in which the defendant shall be present at the trial.
50. Same subject.
51. Same subject.
52. General issue.
53. If defendant stand mute, &c., court shall enter plea of not guilty for him.
54. Issues, how tried.
55. Peremptory challenge of jurors.
56. Prosecuting attorney's right of challenge.
57. Jurors may be required to answer under oath whether they have formed an opinion, &c.
58. Jury de mediatate linguæ.
59. Cases in which the jury shall assess the punishment, &c.
60. Court may try cause by agreement of parties.
61. If the plea be "guilty," court may assess punishment, &c.
62. Costs in case of conviction.
63. Costs in case of acquittal.

Cases in which defendant shall be present at the trial.

SECT. 49. No person indicted for any offence punishable by death or by confinement in the state prison, shall be tried unless personally present during the trial.

Same subject.

SECT. 50. No person indicted for any offence, the punishment, or any part of the punishment of which, is confinement in the county jail, shall be tried in his absence, unless by leave of the court.

Same subject.

SECT. 51. No defendant, indicted for an offence of which a fine may constitute the punishment, or any part thereof, shall be tried without being personally present at the trial, unless some sufficient person, to be approved by the court, will undertake and become replevin bail for the stay of execution and payment of the fine which may be assessed against such defendant, together with costs.

General issue.

SECT. 52. On the trial of all indictments, a defendant may plead the general issue, and give in evidence any and every matter of defence.

* Femes covert and infants, when material witnesses for a prosecution, are never recognized to give evidence, for they cannot legally bind themselves. But when required they are obliged to procure others to be bound for them in a recognizance; and upon their refusal to find such sureties they are liable to be committed to jail, as other witnesses are who refuse to enter into a recognizance themselves. See 1 Blackf. 237, note 1.—1 Chitt. C. L. 91.

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ARTICLE 5.

SECT. 53. If any party, on being arraigned on an indictment, shall stand mute and refuse or fail to plead thereto, the court shall cause the plea of not guilty to be entered for such party, and shall proceed to trial, judgment, and execution, as if such party had pleaded to such indictment in his or her own proper person. If defendant stand mute, &c., court shall enter plea of not guilty

SECT. 54. Issues of fact in criminal prosecutions shall be tried in all cases in like manner as in civil actions, except so far as any law or usage of law shall require a different course. Issues, how tried.

SECT. 55. In all prosecutions for capital offences, each party accused shall have the right to challenge twenty jurors peremptorily; in all prosecutions for any offence punishable by imprisonment in the state prison, each party accused shall have the right to challenge ten jurors peremptorily; and in all other prosecutions each accused party shall have all the rights and privileges of peremptory challenge which are granted to parties in civil causes.* Peremptory challenge of jurors.

SECT. 56. The prosecuting attorney in capital cases shall have a right to challenge six jurors peremptorily; and in all other cases he shall have all the rights and privileges of peremptory challenge which is granted to parties in civil causes.† Prosecuting attorney's right of challenge.

SECT. 57. On the trial of any person under prosecution or indictment for any offence against the laws of this state, it shall be lawful for the defendant or court to require all persons called as jurors to answer on oath whether they have formed or expressed an opinion of the guilt or innocence of such defendant; and from the answer to such questions, and to such other questions as may be asked by the permission of the court, the competency of such jurors shall be determined by the court. Jurors may be required to answer under oath whether they have formed an opinion, &c.

SECT. 58. No alien shall be entitled to a jury of part aliens or strangers, for the trial of any offence. Jury de mediatate linguæ.

SECT. 59. The jury enquiring of the guilt of any accused party shall assess the amount or extent of the fine or other punishment or penalty to be inflicted upon the offender, unless such punishment be death. Cases in which jury shall assess the punishment, &c.

SECT. 60. The defendant may, by agreement with the prosecuting attorney, the court assenting thereto, submit his cause to be tried by the court; and in such case the court shall acquit or convict, and inflict the necessary fine or other punishment or penalties as might be done by the jury.‡ Court may try cause by agreement of parties, &c.

* A person under prosecution for a capital offence about to be submitted to a grand jury may challenge any of the grand jurors for cause, but not peremptorily. *Jones* v. *The State*, 2 Blackf. 475.—*Hudson* v. *The State*, 1 Blackf. 317.

A grand juror, in such a case, in answer to a question put to him by the prosecuting attorney, said "that he thought he could not in his conscience find any man guilty of an offence that would subject him to death." *Held*, that the juror was disqualified. *Jones* v. *The State*, 2 Blackf. 475.

† Challenges to petit jurors are first made by the prisoner, and afterwards by the prosecuting attorney. *Jones* v. *The State*, 2 Blackf. 475.

As to peremptory challenges in civil cases, see ante, p. 731, sec. 317; p. 953, sec. 17.

‡ In criminal cases, except petit misdemeanors, &c., the state, as well as the defendant, may insist on a trial by jury. *The State* v. *Mead*, 4 Blackf. 309.

If the state claim a jury in such criminal case, but the court notwithstanding try the cause without a jury, and acquit the defendant, the trial is a *nullity*, and the cause must be tried again. Ib. And see art. 1, sec. 5, of the constitution, ante, p. 42.

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PART IV.

If plea be "guilty," court may assess punishment, &c.

SECT. 61. Upon the plea of guilty to an indictment, the court receiving such plea shall assess the fine or other punishment to be inflicted upon the defendant.

Costs in case of conviction, &c.

SECT. 62. In all cases of a conviction, the costs of prosecution shall be included in the judgment rendered against the convicted person, unless the court or jury trying the cause expressly find otherwise.

Costs in case of acquittal.

SECT. 63. No defendant in a criminal prosecution, who shall be acquitted or discharged therefrom, shall be liable for any costs or fees of the court, or justice of the peace, or any ministerial officers, or for any charge of subsistence while detained in custody.

ARTICLE VI.

Of judgments, &c.: execution thereof.

SECTION

64. On conviction, &c., defendant may be held in custody till the fine and costs be paid or replevied.
65. Cases in which court or associate judges may discharge prisoner adjudged to pay fine, &c.
66. Execution may issue after such discharge.
67. Stay of execution, &c. on entering replevin bail.
68. Effect thereof.

SECTION

69. Punishment of death, how inflicted.
70. Judgment of death, how executed.
71. Same, in case of a respite, &c.
72. Imprisonment, when defendant convicted of two or more offences.
73. When clerk shall certify conviction to keeper of state prison.
74. Sheriff shall convey convict to state prison.
75. Power of sheriff, &c. in conveying convict to state prison.

On conviction, defendant may be held in custody till fine and costs paid or replevied.

SECT. 64. The court before whom any person is convicted, and adjudged to pay any fine and costs, or either, shall order such person to be committed to the jail of the county until the same be paid or replevied.

Cases in which court or associate judges may discharge prisoner adjudged to pay fine, &c.

SECT. 65. But when any person adjudged to pay any fine and costs, or either, shall be committed for failure to pay or replevy the same, the court in term time, or the two associate judges in vacation, may order such person to be discharged from such custody, if such court or judges shall be satisfied by satisfactory proof, that such person is unable to pay or replevy such fine or costs, or fine and costs, as the case may be.

Execution may issue after such discharge.

SECT. 66. After such discharge an execution may nevertheless issue, at any time, against the goods and chattels, lands and tenements of such person, to levy the amount of such fine and costs, or either, as the case may be, in like manner and with like effect as in the case of other judgments.

Stay of execution, &c. on entering replevin bail.

SECT. 67. Every person convicted of any offence against the criminal or penal laws of this state, may entitle himself to be discharged out of custody, and also to a stay of execution for the fine assessed and the costs adjudged against him, for

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ninety days from the rendition of the judgment, by entering replevin bail therefor in like manner as is provided in civil causes for the stay of execution, either before or after execution shall have been issued. ARTICLE 6.

SECT. 68. Every such recognizance of replevin bail, whether entered in the circuit court or before a justice of the peace, before or after execution issued, shall have the same force and effect as a judgment, as to the principal and his bail, as in cases of replevin bail in civil causes in the circuit court, or before a justice of the peace, as the case may be. Effect thereof.

SECT. 69. The punishment of death, prescribed by law, shall be inflicted by hanging by the neck, at such time, not less than fifteen days after conviction, as the court may adjudge. Punishment of death, how inflicted.

SECT. 70. When judgment of death is pronounced in any case, execution thereof shall be done by the sheriff or other officer acting as such, of the county where such judgment was rendered, upon a warrant issued thereon by the clerk of the court, and sealed with the seal thereof, and reciting such judgment; and such sheriff or other officer, after due execution of such warrant, shall return the same, with his proceedings endorsed thereon, to the clerk's office, there to be filed and kept by such clerk. Judgment of death, how executed.

SECT. 71. When execution of any such sentence shall be respited to a farther day by a reprieve from the governor, such sheriff or other officer shall note the same on such warrant, and the person condemned shall be detained in custody until the day to which such respite was granted; at which time such sheriff or other officer, unless such judgment shall have been reversed, or such person pardoned, or otherwise legally discharged from punishment, shall cause execution of such sentence to be done between the same hours as are specified in the judgment of the court, and shall return and file such warrant, and his return thereto, together with the reprieve under which he acted, in the proper clerk's office, to be filed and kept by such clerk. Same, in case of a respite, &c.

SECT. 72. When any person is convicted of two or more offences at the same term of any court, the imprisonment to which such person shall be sentenced on any second or other subsequent conviction shall commence at the expiration of the preceding term of his or her imprisonment. Imprisonment, when defendant convicted of two or more offences.

SECT. 73. When any person shall be convicted and sentenced to imprisonment in the state prison, the clerk of the court in which such person was convicted, shall, without delay, certify under the seal of his court a copy of the judgment and sentence of the court, and deliver the same to the sheriff or other officer acting as such. When clerk shall certify judgment to keeper of state prison.

SECT. 74. Such sheriff or other officer shall, as soon as practicable thereafter, convey and deliver such convicted person to the keeper of the state prison, and deliver to such keeper such certified copy of the judgment and sentence of the court, Sheriff shall convey convict to state prison.

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and take from the keeper a certificate of the delivery of such convicted person.

Power of sheriff, &c. in conveying convicts to state prison.

SECT. 75. A sheriff, when conveying a convict to the state prison, as above provided, shall have the same authority to demand the assistance of any of the citizens of this state, in any county thereof, as if he were acting in his proper county; and sheriffs, jailors, and all other persons shall render all needful assistance in securing such convict and conveying him or her to the state prison, within their respective counties, under the same penalties and punishment for refusal or neglect thereof, as are prescribed against failing to assist sheriffs in the service of process, in their proper counties.

ARTICLE VII.

General Provisions.

SECTION

76 Governor may commute punishment of death.
77. Cases in which court may require defendant to give surety for good behavior.
78. Breach thereof.
79. Crimes deemed infamous.
80. Stolen property.
81. Offences against property of several owners, they need not all be named in the indictment.
82. The term "person" defined.
83. "Offence" defined.
84. Common law punishments prohibited.
85. Remedies in favor of owner or lessor of house, &c. used, &c. for gaming by the lessee.
86. Process, &c. in criminal cases, by whom executed.
87. Duty of courts in charging grand juries.
88. Indictments, when docketed for trial, &c.

Governor may commute punishment of death.

SECT. 76. Whenever judgment of death shall have been rendered against any person pursuant to the laws of this state, by a tribunal of competent jurisdiction, and in which the circumstances are sufficient to warrant the interposition of executive clemency, but not sufficient to render a complete pardon expedient or proper in the opinion of the governor, he is hereby authorized and empowered to commute the punishment of death, into imprisonment at hard labor or solitary confinement in the state prison for life, or any term not less than ten years.

Cases in which court may require a defendant to give surety for good behavior, &c.

SECT. 77. Every court before whom any person shall be convicted upon an indictment for any offence, not punishable by death or confinement in the state prison, may, in addition to the punishment prescribed by law, require such person to enter into a recognizance with sufficient sureties, in a reasonable sum, to keep the peace, or be of good behaviour, or both, for any time not exceeding one year, and to stand committed until he enter into such recognizance.

Breach thereof.

SECT. 78. In case of a breach of such recognizance, the same proceedings shall be had thereon as in the case of other recognizances.

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ARTICLE 7.

Crimes deemed infamous.

SECT. 79. Every person, who may hereafter be duly convicted of the crimes of treason, murder, rape, arson, burglary, robbery, manstealing, forgery, or wilful and corrupt perjury, shall, ever after such conviction, be deemed infamous, and shall be incapable of holding any office of trust, honor, or profit, voting at any election, serving as a juror, or giving evidence in any court of justice.

Stolen property.

SECT. 80. All stolen property shall be returned to the owner, or the value thereof may be recovered in any court of competent jurisdiction in an action of trover, or other proper action.

Offences against property of several owners—they need not all be named in the indictment.

SECT. 81. When any offence shall be committed upon, or in relation to any personal property belonging to several partners or owners, the indictment for such offence, shall be deemed sufficient on the trial, if it allege such property to belong to any one or more of such partners or owners, without naming all of them.

The term "person" defined.

SECT. 82. When the term "person" or any equivalent word is used to designate the party whose property may be or has been the subject of any offence, or against or to whom any act may have been committed or done, with intent to injure or defraud, such term shall be construed to mean the United States, this state, or any other state or territory of the United States, and all public and private corporations, as well as individuals. *

"Offence" defined.

SECT. 83. The term "offence," when used in this chapter shall be construed as including and meaning every offence, for which any fine or other punishment may be inflicted by law.

Common law punishments prohibited.

SECT. 84. All punishments, prescribed by the common law for offences, are prohibited.

Remedies in favor of owner or lessor of house used, &c. for gaming by the lessee, &c.

SECT. 85. Whenever the lessee of any house, building room, arbor, booth, tenement, or shed, shall be duly convicted upon indictment, of keeping or suffering the same to be used and occupied for gaming, or of renting the same to be used and occupied for gaming, the lease or agreement for the letting of such house, building, room, arbor, booth, tenement or shed shall thereupon become void: and the owner or landlord may enter on the premises so let; and shall be entitled to the same remedies to recover possession thereof as are given by law, in case of a tenant holding over after the expiration of his lease.

Process, etc., in criminal cases, by whom executed.

SECT. 86. All judgments, commitments, and process of the circuit court in criminal cases and proceedings, shall be executed by the sheriff or other officer acting as such.

Duty of courts in charging grand juries.

SECT. 87. It shall be the duty of each circuit court to give all provisions of any statute of this state now in force or which may hereafter be enacted by which any fine or punishment is prescribed to be inflicted for any crime, misdemeanor, or other offence, cognizable in such court by presentment or indictment,

* See *Stewart* v. *The State*, 4 Blackf. 171.

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specially in charge to every grand jury which may be empannelled in such court.*

Indictments, when docketed for trial.

SECT. 88. All criminal causes in which indictments have been found, shall be docketed for the first day of the term, and shall stand for trial at such term, but may be continued to any day in the same or the succeeding term, for any sufficient cause shown to the court.

ARTICLE VIII.

Of taking a change of venue in criminal cases.

SECTION
89. Who may have such change.
90. Petition.
91. Change of venue, how and when granted.
92. Provisions in civil cases, how far applicable.
93. Sheriff to transfer defendant, if in custody.
94. Powers of the court, etc., to which change is granted.
95. New prosecution in such case, where instituted.
96. Recognizance in such case.
97. Indictment.
98. Defendant may be recognized to the court from which the change was taken.
99. Costs of the change of venue.
100. Same subject.
101. Costs of sheriff for removing defendant.

Who may have such change.

SECT. 89. In all criminal cases, which may be pending in any of the circuit courts of this state, any defendant therein may petition the court for a change of venue to another county of the same or another circuit, as the case may require.

Petition.

SECT. 90. Such petition shall set forth the nature of the prosecution, the court where the same is pending, and that such petitioner will not receive a fair and impartial trial, owing to the prejudice of the president judge, or of the associate judges of such court, or to excitement and prejudice against the petitioner in such county, and shall be verified by his affidavit stating the same to be true, as he verily believes.

* The following, it is believed, comprises the various statutory provisions imposing fines, etc., on convictions upon indictment in the circuit court, not embraced in the fifty-third chapter of the Revised Statutes:

Penalty for exercising office before taking the oaths required by law, p. 109, sect. 92, p. 915, sect. 315.—Officer failing to give new bond, etc., p. 112, sect. 106, p. 114, sect. 123.—Violations of the election laws, etc., pp. 152—154.—Failing to deliver books, etc., to the auditor of public accounts, p. 164, sect. 39.—Clerk, recorder, and auditor failing to occupy fire proof office, p. 184, sect. 22.—Certain county officers purchasing county orders below par, p. 185, sect. 31.—Board of commissioners violating duties, p. 186, sect. 36.—County assessor, p. 191, sect. 65.—County recorder, p. 198, sect. 15.—Certain officers as to the revenue, p. 234, sect. 155.—Officers as to surplus revenue fund, p. 253, sect. 103.—County auditor, treasurer, and school commissioner, p. 265, sect. 204.—Injury to railroad, p. 273, sect. 258, p. 274, sect. 262.—Injury to canals, etc., p. 279, sect 270, p. 288, sect. 328.—Supervisors, p. 338, sects. 92, 93, 94, 95.—Estrays, p. 373, sect. 22, p. 374, sect. 26.—For injuries to burying grounds, etc., p. 400, sect. 68.—Altering brands of beef, pork, and flour barrels, etc., p. 412, sect. 8.—Usury, p. 582, sect. 36.—Violation of the laws concerning marriage, etc., p. 597, sects. 18, 19, 20, 21.—Evading habeas corpus, etc., p. 606, sect. 76, p. 934, sects, 43, 44, 45.—Forging attorney's license, p. 662, sect. 104.

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ARTICLE 8.

Change, how, and when granted.

SECT. 91. Such court, in the exercise of a fair and sound discretion, may grant such change of venue; and if the same is prayed on the ground of objections to the president judge, such change shall be awarded to some convenient county of an adjoining circuit; or if such change is prayed on the ground of objections against the associate judges or of excitement and prejudice in the county, such change shall be awarded to the nearest and most convenient county of the same circuit.

Provisions in civil cases, how far applicable.

SECT. 92. Such change of venue shall be governed in all respects, not inconsistent with this article, by the provisions of law, granting a change of venue in civil actions, except that the defendant or defendants obtaining such change, shall not be liable for the costs thereof, unless he, she, or they, be convicted.

Sheriff to transfer defendant, if in custody.

SECT. 93. The sheriff of the county, if any such defendant be in his custody, shall, under the order of the court, transfer and deliver such defendant to the sheriff of the county to which such change is allowed; and upon such transfer and delivery with a certified copy of such order of change, the sheriff last mentioned shall receive and detain the defendant in his custody until legally discharged therefrom, and give a certificate of such delivery to the other sheriff.

Powers of the court, &c. to which change is granted.

SECT. 94. The court to which such change is granted, shall take cognizance of such cause, and shall proceed therein to trial, judgment, and execution in all respects, as if the indictment therein had been found and returned by a grand jury impannelled in such court.

New prosecution in such case when instituted.

SECT. 95. If it shall be necessary to institute a new prosecution for the same offence after such change, the defendant, in such case shall elect, when thereunto required by the court, whether such further prosecution shall be instituted in the court to which, or from which such change of venue was taken; and thereupon he may be recognized to appear in the court which he elects, or committed for want of bail, or detained in custody, or remanded to the county from which the change was taken, as the case may require.

Recognizance in such case.

SECT. 96. If he give recognizance to appear before the circuit court of such last mentioned county, the same shall be taken of record, and a copy thereof, certified under the seal of the court, to the clerk of the court to which he is recognized, shall be recorded by the clerk thereof, and shall have the same force and effect in such last mentioned court, as if originally taken therein.

Indictment.

SECT. 97. If such defendant is prosecuted for such offence in the court to which such change was taken, such indictment may be found and prosecuted to final execution therein, as if such offence had been committed in the county of such court.

May be recognized to the court from which the change was taken

SECT. 98. If such party refuse to elect in which county such prosecution may be instituted, he shall be recognized to appear before, or remanded to, the court of the county from which the change of venue was taken, in like manner as if he had elected to be proceeded against in such county.

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Costs of the change of venue.

SECT. 99. In all changes of venue under the provisions of this article, the county from which the change was taken shall be liable for the expenses and charges of removing, delivering, and keeping the prisoner, the per diem allowance of the associate judges, and expenses of the jury trying the cause, the necessary expenses incurred by or on account of the officers' attending such trial, and of the whole panel of jurors in attendance during the time of such trial, and all other expenses necessary and consequent upon such change of venue and the trial of such defendant.

Same subject.

SECT. 100. All costs and charges specified in the last preceding section, or coming justly and equitably within its provisions, shall be audited and allowed by the court trying any such cause; but where specific fees are allowed by law for any duty or service, no more or other costs shall be allowed therefor than could be legally taxed in the court from which such change was taken.

Costs of sheriff for removing defendant.

SECT. 101. Sheriffs, for delivering prisoners to the sheriffs of other counties, under the provisions of this article, shall receive the same fees therefor as are allowed for the conveyance of convicts to the state prison.

CHAPTER 55.

OF THE POWERS AND DUTIES OF JUSTICES OF THE PEACE IN CRIMINAL CASES AND PROCEEDINGS.

SECTION

1. Justice's jurisdiction.
2. In what cases he shall issue a warrant.
3. His duty after an arrest.
4. Recognizance of witnesses, etc.
5. Jurisdiction in petty offences.
6. In cases of assault and battery.
7. Jury trial.
8. Extent of fine.
9. Time given for trial.
10. Change of venue.
11. Same subject.
12. Recognizance if trial postponed, etc.
13. Witnesses recognized.
14. Defendant committed unless fine, etc., be paid or replevied, except in case of a female.
15. Plea of guilty in case of affray or assault and battery.
16. Same subject.
17. Exceptions.

SECTION

18. Person committed for fine, etc., imprisoned one day for each fifty cents of the fine.
19. Costs in such case.
20. County in such case a privileged creditor.
21. Appeal.
22. Same subject.
23. Proceedings on the appeal.
24. Affidavit for search warrant, etc.
25. Duty of justice as to stolen goods.
26. If they are not stolen.
27. Surety to keep the peace.
28. Affidavit.
29. Trial.
30. Recognizance.
31. Proceedings in case of failure to give surety.
32. If complaint not sustained, to discharge defendant—costs against complainant.

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SECTION
33. Proceedings in the circuit court—surety—costs.
34. Commitment for want of surety.
35. Costs if defendant discharged.
36. Complaint for surety of the peace may be filed in the circuit court.
37. Amount of bail before justice.
38. Recognizances taken by the justice where filed.
SECTION
39. Minors and married women—witnesses.
40. Proviso.
41. Justice to file list of fines, etc.
42. Clerk's duty as to such list.
43. Constable's duties in criminal cases.
44. Forms for justices in criminal cases.

ARTICLE 1.

SECTION 1. Every justice of the peace shall have jurisdiction in criminal cases throughout the county in which he was elected and shall reside, and shall be a conservator of the peace therein. Justice's jurisdiction.

SECT. 2. Each justice of the peace is authorized and required, on complaint made on oath or affirmation, or on view without complaint, forthwith to issue his warrant and cause any person charged with the commission of any crime or breach of the law, to be arrested and brought before himself or some other justice of the peace in the same county, to answer such charge or complaint and be further dealt with according to law. In what cases he shall issue his warrant.

SECT. 3. It shall be the duty of the justice of the peace before whom any such person shall be brought, to inquire into the complaint, and, except as hereinafter provided, every such person either to commit to the jail of the county, or discharge, or to recognize with surety to be and appear before the circuit court of the county on the first day of the next term thereof, to answer to such charge, abide the judgment of said court, and not depart therefrom until discharged by due course of law, as the nature of the case may require. His duty after arrest.

SECT. 4. Such justice shall also recognize, with or without surety all such complainants and witnesses as have made complaint, or been examined by, or brought before him in behalf of the state on any criminal complaint, and whose testimony he may consider necessary or important in the further prosecution of the charge, to be and appear before the circuit court of the county on the first day of the next term thereof, to give evidence before the court or the grand jury, and not depart without leave of said court. Recognizance of witnesses, etc.

SECT. 5. Justices have exclusive jurisdiction of, and shall, in a summary way, upon complaint made before them under oath or affirmation, inquire into and punish by fine, all trivial breaches of the peace and petit misdemeanors, where the penalty affixed by law cannot exceed three dollars. Jurisdiction in petty offences.

SECT. 6. Justices shall have jurisdiction in cases of assault and battery, affrays, and other breaches of the peace, and, on complaint in writing, under oath or affirmation, shall have power to assess a fine not exceeding twenty dollars; and such cases shall be tried by the justice or by a jury, as the defendant may elect; or such defendant, without a trial, may choose to be recognized to appear and answer to the charge in the next In cases of assault and battery, etc.

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circuit court of the county, and enter into recognizance accordingly.

Jury trial.

SECT. 7. Juries for the trial of offences before the justice shall be summoned, and such jury trial conducted, in all respects, before the justice, as is provided by law for trial by jury in civil actions before justices of the peace, so far as such provisions of law are applicable and not repugnant to the provisions of this chapter.

Extent of fine.

SECT. 8. If the defendant be found guilty of any charge contemplated by the section next preceding the last section, before the justice or by a jury, the fine shall not be more than twenty dollars; or if, on the hearing or trial, the justice or jury shall be of opinion that the case submitted to him or them is of so aggravated a nature that the limitation of fine in this section will not be an adequate punishment for the offence committed, the jury, having so expressed their opinion to the justice shall be discharged, and the justice, in either case, shall commit the defendant to the jail of the county, or recognize him to appear at the next circuit court in the manner heretofore in this chapter provided.

Time given for trial.

SECT. 9. In cases where a fine of twenty dollars may be imposed, the defendant may, on good cause shown, have a postponement of the trial for a reasonable term of time, at the discretion of the justice.

Change of venue.

SECT. 10. Every defendant brought before a justice of the peace, on complaint and warrant for any breach of the law, shall, on such affidavit as is required for a change of venue in civil cases, before a justice of the peace, be entitled to a change of venue to some other disinterested justice of the peace of the county.

Same subject.

SECT. 11. In case of taking such change of venue, the defendant shall be held in custody and taken by the constable having him in charge to the justice to whom such change of venue is taken; or, he may be recognized, if the offence be bailable, as in other cases above provided, to appear and answer before such other justice and abide his order, and if necessary, the witnesses of the state may be recognized in like manner to appear and testify before such other justice.

Recognizance, if trial postponed, &c.

SECT. 12. Whenever it shall be necessary to postpone or continue the examination or trial of any person charged with the commission of a crime or a breach of the law, before a justice of the peace, such justice shall cause such person to be committed to the jail of the county for the time of postponement or continuance; or if the offence be bailable, such person may be recognized in the manner herein before provided, to appear at the time and place of examination or trial, and abide the order and judgment of the justice in the case.

Witnesses recognized.

SECT. 13. Witnesses for the state may be also recognized to appear and testify at the proper time and place, before the justice taking the recognizance, or some other justice of the peace as the case may require.

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ARTICLE 1.

SECT. 14. Whenever a justice shall render a judgment against a defendant, under the provisions of this article, for a fine and costs, it shall be a part of the judgment that the defendant stand committed until the fine and costs be paid or replevied; and the defendant may replevy the same, in any case for the term of ninety days, by entering sufficient bail on the justice's docket for the amount of the fine and costs; and on the defendant's refusal or neglect to pay such fine and costs, or to replevy the same, such defendant, unless a female, shall be committed to the common jail of the county.

Defendant committed, unless fine, &c. be paid or replevied.

Female.

SECT. 15. Any person who has been guilty of an assault and battery, or of an affray may go before a justice of the peace, and with the consent of the person injured, orally given to such justice plead guilty thereto; or any person who has been guilty of an affray may go before a justice, and with the consent of any person who has seen the same, orally given to such justice, be admitted to plead guilty of such offence, and the justice in every such case shall have authority to assess such fine as may be reasonable, not less than three dollars, nor more than twenty dollars, and costs.

Plea of guilty in case of affray or assault and battery.

SECT. 16. No justice shall hear and determine any complaint for an assault and battery, or an assault, unless the injured party be present as a witness, or having been subpœnaed, refuse to attend; and no trial shall be had upon a complaint for an affray, unless some person who saw the same, shall be present as a witness, or having been subpœnaed refuse to attend.

Same subject.

SECT. 17. The provisions of the last preceding section shall not extend to offences committed in the presence and view of the justice.

Exceptions.

SECT. 18. Any person committed to the common jail of a county by virtue of a conviction and judgment according to the provisions of this chapter, after having been imprisoned one day for every fifty cents of the fine and costs, imposed upon him, and having taken an oath before some officer authorized to administer oaths, that he has no moneys, rights, credits or effects in his possession or under his control, or in the possession, or under the control of any other person or persons for his use, whereby or wherewith he can pay the said fine and costs, or secure the same, shall be discharged from imprisonment.

Person committed for fine, imprisoned one day for each fifty cents of the fine.

SECT. 19. In all cases where a person shall be imprisoned in the common jail of a county for the want of bail before trial, or for inability to pay a fine imposed upon him by the judgment of a justice of the peace, and shall have been discharged in the manner above provided, the costs of keeping such defendant in prison shall be paid by the proper county as other county expenses are paid.

Costs in such case.

SECT. 20. In such case the county shall afterwards be considered a privileged creditor of said defendant, to the amount of his prison expenses, having priority of all others, and be first paid; and execution on the judgment of the justice of the peace

County in such case a privileged creditor.

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by which such fine was assessed, against the goods and chattels of such defendant, to levy the amount of the fine and all costs, may be issued at any time after such discharge; and where the defendant is a female an execution for the fine and costs assessed against her, may issue at any time after judgment, unless the same shall have been replevied, in which case execution shall not issue until the expiration of the stay, as in other criminal cases.

Appeal.

SECT. 21. Any person convicted under the provisions of this chapter shall have the privilege of appealing from the judgment of the justice within thirty days from and after the rendition thereof, to the circuit court of the proper county, by entering into a recognizance, with approved surety, conditioned for the payment of the costs before the justice and in said court, if judgment therein be given against such appellant.

Same subject.

SECT. 22. When any such appeal is so taken, the justice shall recognize the witnesses on the part of the state in the sum of fifty dollars each, and make out and file a full, true, and complete transcript of his proceedings and judgment, together with such recognizances, and all the papers belonging to such case, with the clerk of the circuit court of the proper county, on or before the first day of the term next after the taking of such appeal.

Proceedings on the appeal.

SECT. 23. If the grand jury of the county shall refuse to find a true bill of indictment against the said apellant at the term of the court next after such appeal, he shall be finally discharged; but if an indictment is presented by the grand jury against him for the offence charged, the case shall be tried in such circuit court as if there had been no trial thereof before the justice of the peace from whose judgment it was appealed.

Affidavit for a search warrant, &c.

SECT. 24. It shall be lawful for a justice of the peace, upon complaint made before him on oath or affirmation, that a larceny, burglary, or robbery has been committed, and that the person swearing or affirming does verily believe that the stolen property (goods or other property) is concealed in any dwelling house, out house, garden, yard, or other place or places, to issue a warrant under his hand and seal, commanding every such dwelling house or place to be searched in the day time, and if any of the goods described in such warrant be found therein, that the said goods be seized and brought before the justice issuing such warrant; or such warrant may issue to search any house or place in the night time, if the affidavit be positive that the stolen goods or property are concealed therein.

Duty of justice as to stolen goods.

SECT. 25. If upon the examination of witnesses before the justice who issued such warrant, it shall be determined by such justice that the goods so brought before him had been stolen, it shall be the duty of such justice to keep possession of such goods until the conviction of the thief, unless otherwise ordered by the proper circuit court, or until the claimant's right be otherwise ascertained.

If they are not stolen goods.

SECT. 26. But in case the justice shall, upon such examination as aforesaid, determine that such goods so seized had not

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been stolen, then the goods shall be immediately restored to the person from whose possession they were so taken.

Surety to keep the peace, &c.

SECT. 27. Any justice of the peace may, without complaint, bind all those to keep the peace who, in his presence, make an affray, or who threaten to kill or beat another, or to injure his person, or maliciously or mischievously to injure or destroy the property of any person; also, all such as are brought before him by any constable or other officer for any breach of the peace, affray, or threat as aforesaid; and also all persons who have before entered into recognizances to keep the peace, and have broken the same.

Affidavit.

SECT. 28. Whenever any person having just cause to fear that another will burn his house, mill, shop, or other building, or maliciously or mischievously injure or destroy any of his property, or will do him or any of his family whom he is bound to protect, a personal injury, by killing, beating, or otherwise injuring him or any of them by violence, or procure others to do so, shall pray surety of the peace, and make oath or affirmation in writing that he has just cause to fear, and does fear and apprehend that any such injury will be done and committed against him or any of his family whom he is bound to protect, or against his property as aforesaid; and will also swear or affirm that he does not make such complaint, or pray such surety, from any malicious motive or disposition to vex or harrass the accused person; it shall thereupon be the duty of the justice to whom such complaint is made as aforesaid, to issue a warrant in the name of the state, directed to any constable of his township, commanding him forthwith to arrest the person complained of, and him or her to take and have before such justice, or any other justice of the peace of said county, to answer said complaint.

Warrant.

Trial.

SECT. 29. Upon the return of such warrant with the accused person in custody, it shall be the duty of the justice to whom it is returned to inquire into the truth of such complaint, by the examination of the complainant and of such other witnesses as may be produced.

Recognizance.

SECT. 30. If upon such examination the justice shall be of opinion that there was just cause therefor, he shall order the person complained of to enter into recognizance with good and sufficient surety, being a freeholder or householder in the county, in any sum not exceeding five hundred dollars nor less than fifty dollars, conditioned for his or her appearance before the next circuit court of the proper county, on the first day of the next term thereof, or forthwith if the court be then in session, and not depart therefrom without leave, and in the mean time that he or she shall keep the peace and be of good behavior generally, and especially towards the person complaining.

Proceedings in case of failure to give surety.

SECT. 31. In default of such recognizance and surety as aforesaid, the justice shall commit the person complained of to the jail of the county, there to remain until discharged by due course of law.

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If complaint not sustained, to discharge defendant. Costs against complainant.

SECT. 32. But if the justice, on the hearing, shall be of opinion that the accusation is not established, it shall be his duty to discharge the accused, and render judgment in the name of the state against the party complaining, for the costs of the prosecution and of the defendant, and the expense of keeping the accused person in prison, if he or she shall have been committed; which judgment may be replevied and execution issued thereon as in civil cases.

Proceedings in the circuit court.

Surety.

Costs.

SECT. 33. The circuit court to which any recognizance to keep the peace as aforesaid shall be returned, may, at their discretion, upon examination or otherwise, discharge the person accused from such recognizance, or may order him or her to enter into such further surety as may be just, thereafter to keep the peace and be of good behavior, for such term of time as to such court may appear proper; and shall make such order and judgment respecting the costs in such court and before the justice of the peace as against the party complaining, or the defendant, as shall seem just and right.

Commitment for want of surety.

SECT. 34. And for want of such surety the court shall commit the person accused to the jail of said county, there to remain until such order be complied with, or he or she be otherwise discharged by due course of law.

Costs, if defendant discharged.

SECT. 35. If such circuit court, on examination of the complaint, shall discharge the person accused; or if the person complaining shall fail to appear and prosecute the complaint, by reason of which the defendant shall be discharged, such court may, at their discretion, render judgment against the person complaining, for the costs of prosecution and the defendant's costs, and the expense of keeping the defendant in prison, if he or she shall have been committed; which judgment may be replevied and execution issued thereon as in civil cases.

Complaints for surety of the peace may be filed in circuit court.

SECT. 36. Complaints for surety of the peace may be filed originally in the circuit court, and the court shall hear and determine the same, and recognize, commit, or discharge the party complained of, as to such court shall seem necessary and right, and may order or give judgment of costs against the party making the complaint or the party complained of, as the justice of the case may require.

Amount of bail before justice.

SECT. 37. All recognizances entered into before a justice of the peace, shall be in such sum and with such surety as the justice in his discretion may require, (except where a sum is herein specified) payable to the state of Indiana, signed and sealed by the recognizors, and attested and approved by the justice.

Recognizances taken by the justice, where filed.

SECT. 38. All the recognizances authorized to be taken by any of the provisions of this chapter, by any justice of the peace, (except for the appearance of a defendant to answer before him, or for a witness to appear and testify before him,) either during term time or in the vacation of the circuit court, shall be delivered or transmitted by the justice taking the same to the clerk of the proper circuit court, without unnecessary delay, and before the commencement of the term next thereafter to be holden,

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if taken in vacation; but if the same were taken in term time, then it shall be returned forthwith.

Minor or married woman a witness.

SECT. 39. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness.

Proviso.

SECT. 40. Nothing contained in this chapter shall be construed to prevent grand juries from presenting any person guilty of any offence where the fine may exceed three dollars, or where imprisonment forms any part of the punishment, unless such person shall have been duly convicted or acquitted thereof.*

Justice to file list of fines, etc.

SECT. 41. Each justice of the peace shall make out and file in the office of the clerk of the circuit court of the county in which such justice resides, on the first day of each term of such court, a list of all fines and penalties assessed by him, or collected of any individual whatever since the commencement of the last preceding term of such court; and also a succinct statement in writing, of every case tried before him for any criminal offence or petit misdemeanor, specifying therein the name of the person tried, for what offence, when committed, and the result of such trial.

Clerk's duty as to such list.

SECT. 42. It shall be the duty of such clerk, at each term of the circuit court, to lay before the grand jury a list of such returns so made by the justices.

Constable's duties in criminal cases, etc.

SECT. 43. It shall be the duty of every constable to whom any warrant, precept, subpœna, or other process is delivered to be served or executed in any criminal case, to serve and execute the same without unnecessary delay, and to bring every person whom he may have arrested by virtue of any such process, speedily before the justice issuing the same, or some other justice of the county, to be dealt with according to law.†

Forms for justices in criminal proceedings

SECT. 44. The following forms shall be observed substantially by justices of the peace in criminal proceedings when they may be applicable; but may be varied to suit the nature of the case:

No. 1. *Form of an affidavit whereon to issue a state warrant.*

Affidavit for state warrant.

State of Indiana, ——— county, sct.

Before me, J— H—, one of the justices of the peace for said county, personally came A— B—, who being duly sworn (or affirmed) according to law deposeth and saith, that on or about

* On the trial of an indictment for an assault and battery, the defendant, in order to prove a former conviction before a justice of the peace for the same offence, may introduce a transcript of the justice's record, showing the defendant's conviction of the offence, though the transcript do not state that some person, present at the commission of the offence, was examined as a witness, etc. The facts relative to the evidence given at the trial before the justice, may, in such case, be proved by parol. *Goudy* v. *The State*, 4 Blackf. 548.

Whether the transcript, in such case, is of itself, prima facie, sufficient to make it necessary for the state to prove that the requisite testimony was not given at the trial before the justice, quære. Ibid.

† See further as to duties of constable, etc., ante, pages 909 to 913.

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the —— day of ——, at the county of ———, one C— D—, late of said county, did (here describe the crime or offence committed, as nearly according to the nature thereof as the case will admit; or after setting forth the time and place as above, after the word "county," say,) a certain (here describe the crime or offence committed) was perpetrated on the body (or goods) of E— F—, and that he verily believes that a certain C— D—, late of said county, is guilty of said offence, (or that he has been aiding and assisting in the commission thereof,) and further saith not.

Subscribed and sworn to this —— day of ——, 18—, before me. J— H—, Justice of the peace. } (Signed) A— B—.

No. 2. *State warrant.*

State warrant.

State of Indiana, ——— county, sct.

To any constable of said county, greeting:

Whereas, complaint has been made before me, J— H—, a justice of the peace of the county aforesaid, on the oath (or affirmation) of A— B—, that on the —— day of ———, at the county aforesaid, C— D—, late of said county, did (here describe the offence as in the affidavit.) You are therefore hereby commanded to take the said C— D—, and him forthwith bring before me or some other justice of the peace of said county, to answer unto said complaint, (or, if the warrant issue on view without complaint, say) for said offence, (instead of "said complaint,") and be farther dealt with according to law.

Given under my hand and seal this —— day of —— 18—.

J— H—, [SEAL.]
Justice of the peace.

No. 3. *Search warrant.*

Search warrant

State of Indiana, ——— county, sct.

To any constable of said county, greeting:

Whereas, it appears to me, J— H—, a justice of the peace of said county, by the oath of A— B—, that the following goods and chattels, to-wit: (here describe them) have within —— days last past (or were on the —— day of ———,) by some person or persons unknown, (but naming the person if known) been feloniously stolen, taken, and carried away out of the hands and possession of (or from the premises of) C— D—, of the county aforesaid; and the said A— B— doth, on oath, (or affirmation) declare that he verily believes that said goods or a part thereof are concealed (in, on, or about the house or premises) of E— F—, (describing the place to be searched) in said county. These are therefore to command and authorize you, with necessary and proper assistance, to enter into said (describe the house or other place to be searched as above) and

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there diligently search for said goods and chattels, and if the same or any part thereof be found on such search, that you bring the same, as also the said E— F—, forthwith before me or some other justice of said county, to be disposed of and dealt with according to law. Hereof make due service and return. ARTICLE 1.

Given under my hand and seal this —— day of ———, 18—.

J— H—, [SEAL.]
Justice of the peace.

The affidavit for a search warrant may be substantially the same as the introductory or reciting part of the warrant as laid down in the above form, and should always name the suspected person or thief if the affiant can safely do so.

No. 4. *Warrant for surety of the peace, etc.*

Warrant for surety of the peace.

State of Indiana, ——— county, sct.

To any constable of said county, greeting:

Whereas, A— B— has this day made oath before me, J— H—, a justice of the peace of said county, that he has been threatened by C— D—, of said county, and that he has just cause to fear and verily believes that said C— D— will do some bodily injury to himself, (or some one of his family, or burn his house, or destroy his property, or maliciously or mischievously injure it, or procure some other person or persons so to do, as the case may be) and that he does not make such complaint from any malicious motive nor to vex or harass the said C— D—. Whereupon the said A— B— has prayed surety of the peace against the said C— D—.

You are therefore hereby commanded to arrest the said C— D—, and bring him forthwith before me or some other justice of the county, to find surety for his personal appearance at the next circuit court to be holden in and for said county, and in the meantime to keep the peace generally, and especially towards the said A— B— (and his family if required.) Hereof make due service and return.

Given under my hand and seal this —— day of ———, 18—.

J— H—, [SEAL.]
Justice of the peace.

The above form shows how the affidavit should be drawn.

No. 5. *Recognizance of a party accused.*

Recognizance of an accused party.

State of Indiana, —— county, sct.

Be it remembered, that on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, A— B— and C— D— personally appeared before me, J— H—, a justice of the peace of said county, and jointly and severally acknowledged themselves to owe and be indebted to the state of Indiana in the sum of —— dollars, to be levied of their and each of their goods and chattels, lands and tenements, if default be made in the condition following, to-wit: The condition of this recognizance is such, that if the said A— B— shall personally appear

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at and before the next circuit court, to be holden in and for said county, on the first day of the term, (or if such recognizance be taken in term time of the court, then it shall require the party to appear forthwith before such court) then and there to answer a charge of* (here name the crime or offence with which the party is accused), and abide the judgment of the court, and not depart without leave; then this recognizance shall be void, otherwise it shall be and remain in full force and virtue.

Taken and acknowledged before me, on the day and year above written.
J— H—, [SEAL.]
Justice of the peace.

(Signed) A— B—
C— D—

No. 6. *Recognizance to compel the attendance of a witness.*

Recognizance of witnesses.

[If the recognizance be to compel the appearance of a witness on behalf of the state, then the condition thereof will run thus:]

The condition of this recognizance is such, that if the above bound A— B— shall personally be and appear before the circuit court on the first day of the term thereof next to be holden for the county aforesaid, (or forthwith, as the case may require) then and there to give evidence in behalf of the state, touching such matters as shall be then and there inquired of him, and not depart the court without leave, then this recognizance shall be void; (concluded as in No. 5.)

No. 7. *Recognizance to keep the peace.*

To keep the peace.

If the recognizance be to keep the peace, then follow form No. 5 to the *, after stating the offence as there required, proceed thus: And abide the order of the court thereon, and in the mean time to keep the peace and be of good behavior towards the citizens of the state generally, and especially towards the said A— B—; then (conclude as in form No. 5.)

No. 8. *Commitment for want of bail, and in cases not bailable by law.*

Commitment for want of bail.

State of Indiana, —— county, sct.

To the keeper of the jail in the county aforesaid, greeting:

Whereas, A— B—, late of said county, has been arrested on the oath of C— D—, for (describe the crime or offence), and has been examined by me, J— H—, one of the justices of the peace in and for said county, on such charge,* and required to give bail in the sum of —— dollars for his appearance before the circuit court of said county on the first day of the next term thereof, (or forthwith, as the fact was; but this requisition of bail is only to be made and stated in bailable offences,) which requisition he has failed to comply with: Therefore, in the name

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of the state of Indiana, I command you to receive the said A— B— into your custody, in the jail of the county aforesaid, there to remain until discharged by due course of law.

Given under my hand and seal this —— day of ——, 18—.

J— H—, [SEAL.]
Justice of the peace.

No. 9. *Commitment pending a trial.*

Commitment pending a trial.

The state of Indiana, —— county, sct.

To the keeper of the jail of the county aforesaid, greeting:

Whereas, A— B— of said county has been arrested on the oath (or affirmation) of C— D— for (here state the crime or offence), and has been brought before me, J— H—, one of the justices of the peace in and for said county, for trial, which trial has been necessarily postponed by reason of the (here state the reason, as the absence of a material witness, or other cause of delay, according to the fact): Therefore, in the name of the state of Indiana, I command you to receive the said A— B— into your custody, in the jail of said county, there to remain, (&c. as in form No. 8.)

No. 10. *Subpœna for witness.*

Subpœna.

State of Indiana, —— county, sct.

To any constable of said county, greeting:

You are hereby commanded to summon A— B— to be and appear before me, J— H—, one of the justices of the peace in and for said county, at my office forthwith, (or on the —— day of ——, at —— o'clock in the ——noon,) there to testify and the truth to say touching a certain complaint made on behalf of the state against C— D—, and this he shall in nowise omit under the penalty of law: Hereof make due service and return.

Given under my hand and seal this —— day of ——, 18—.

J— H—, [SEAL.]
Justice of the peace.

No. 11. *Oath or affirmation of a witness.*

Oath or affirmation.

You do swear (or affirm) that the evidence you will give in this matter of complaint against C— D—, now under examination, shall be the truth, the whole truth, and nothing but the truth. So help you God (or, thus you affirm under the pains and penalties of perjury.

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CHAPTER 56.

OF CORONERS' INQUESTS.

SECTION
1. Coroner notified of death, &c., shall issue warrant for a jury to a constable.
2. Service and return thereof.
3. Penalty if constable fail to execute warrant; same as to jurors failing to attend.
4. Oath of foreman of the jury.
5. Oath of the other jurors.
6. Coroner's charge to the jury.
7. Proclamation.
8. Witnesses; their oath.
9. Evidence taken in writing.
10. Verdict of jury.
11. Description by the jury of the party deceased, &c.; money, &c., when paid into county treasury.
12. Duty of treasurer.
13. Coroner to publish description of deceased person.
14. Suit against coroner for failing to pay over to treasurer, &c.
15. Farther duty of coroner.
16. Cases in which justice of the peace may act for coroner.

Coroner notified of death, &c., shall issue warrant for a jury to a constable.

SECTION 1. Every coroner, as soon as he shall be notified of the dead body of any person, supposed to have come to his death by violence or casualty, found or lying within his county, shall make out his warrant, directed to a constable of the township where the dead body is found or lying, requiring him forthwith to summon a jury of good and lawful men of the said township, not less than fifteen in all, so that twelve may be present, to appear before such coroner, at the time and place expressed in his warrant, and to inquire upon view of the body, (naming therein the person, if known, there lying dead) how, and in what manner, and by whom, he or she came to his or her death.

Service and return thereof.

SECT. 2. Every constable to whom such warrant shall be delivered or directed, shall forthwith execute the same, and shall repair to the place where the dead body is at the time mentioned, and make return of the warrant, with his proceedings thereon, to the coroner who granted the same.

Penalty if constable fail to execute warrant. Same as to jurors failing.

SECT. 3. Every constable failing to execute such warrant, or to return the same as aforesaid, shall forfeit and pay the sum of three dollars; and every person summoned as a juror as aforesaid, who shall fail to appear, without having a reasonable excuse, shall forfeit any sum not exceeding three dollars; which fines shall be recovered by action of debt, in the name of the state of Indiana, before any justice of the peace in the proper township, and be applied to the use of the county seminary.

Oath of foreman of the jury.

SECT. 4. The coroner shall administer an oath or affirmation to twelve of the jurors who shall appear; to the foreman first, in the following manner: "You do solemnly swear, or affirm, (as the case may be,) that you will diligently enquire, and true presentment make, how, and in what manner, and by whom, A. B., who here lies dead, came to his death, and that you will deliver to me, the coroner of this county, a true inquest thereof,

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according to such evidence as shall be laid before you, and according to the best of your knowledge, so help you God."

Oath of other jurors.

SECT. 5. The other jurors shall swear or affirm (as the case may be) in the following form: "Such oath (or affirmation) as your foreman has now taken before you on his part, you and each of you, will keep and observe on your respective parts, so help you God."

Coroner's charge to the jury.

SECT. 6. The jurors being sworn, the coroner shall give them a charge upon their oaths, to declare of the death of the person, whether he or she died of felony, or mischance, or accident; and if of felony, who were the principals, and who were accessories, with what instrument he or she was struck or wounded, and so of all prevailing circumstances, which may come by presumption; and if by mischance or accident, whether by the act of man, or whether by hurt, fall, stroke, drowning, or otherwise; also, to inquire of the persons who, if any, were present, of the friends of the body, his or her relatives and neighbors, whether he or she was killed in the same place where the body was found; and if elsewhere, by whom the body was brought thence, and of all other circumstances relating to said death; and if he or she died of his or her own felony, then to inquire of the manner, means, or instrument, and of all other circumstances concerning such death.

Proclamation.

SECT. 7. The jury being charged shall stand together, and proclamation shall be made for any person, who can give evidence, to draw near, and they shall be heard.

Witnesses.

SECT. 8. Every coroner is further empowered to send his warrant for witnesses, to be served by a constable, commanding them to come before him to be examined, and to declare their knowledge concerning the matter in question; such coroner shall administer an oath or affirmation to them in the following form: "You do solemnly swear (or affirm) that the evidence you shall give to the inquest, concerning the death of A. B. here lying dead, shall be the truth, the whole truth and nothing but the truth, so help you God."

Their oath.

Evidence taken in writing.

SECT. 9. The evidence of such witness shall be in writing, subscribed by him or her, and if it relate to the trial of any person concerned in the death, the coroner shall bind such witness or witnesses by recognizances in a reasonable sum for their personal appearance at the next circuit court, to be holden within the same county, there to give evidence accordingly, and commit to the common jail of said county any witness or witnesses refusing to enter into such recognizance; and he shall return to the same court, such inquisition, written evidence, and recognizances by him taken.

Recognizance of witnesses.

Verdict.

SECT. 10. The jury having viewed the body, heard the evidence, and made all the inquiry within their power, shall draw up, and deliver to the coroner, their verdict upon the death under consideration, in writing, under their hands and seals.

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Description by the jury of the party deceased, etc.

SECT. 11. It shall also be the duty of the coroner to require the jury impannelled, to examine and make a report, signed and sealed by said jurors and said coroner, which shall be returned with the verdict of said jury, giving a minute and particular description of the person deceased, together with the name of the said deceased, if the same can be ascertained, and the amount of money, property or other valuables found with the dead body of the said deceased; which amount of money or other property if there be no person entitled to take charge of the same, shall be placed in the hands of the treasurer of the county in which the said body may be found, and by him paid over to the person or persons authorized to receive the same, if any such person shall call therefor.

Money, etc., when paid to county treasurer.

Duty of treasurer.

SECT. 12. It shall be the duty of the treasurer, if the money aforesaid should not be called for within one year from the time of receiving the same, to loan it out at an interest of not less than eight per centum per annum, to be applied to common schools, equally to be divided among the townships of said county.

Coroner to publish description of deceased person.

SECT. 13. It shall be the duty of such coroner to publish in some public newspaper printed in or nearest to such county the description and name of the deceased, if the same can be ascertained, and the amount of money, property, or other valuables, found in his possession, in cases in which no person entitled thereto shall claim the same.

Suit against coroner for failing to pay over to treasurer, etc.

SECT. 14. If any coroner shall refuse or fail to pay into the hands of the treasurer of any county, the money or other property which come into his hands as aforesaid it shall be, and is hereby made the duty of said treasurer to sue for and collect the same in his own name, before any court having competent jurisdiction within the county.

Further duty of coroner.

SECT. 15. Upon an inquisition found before any coroner, of the death of any person by the felony or misfortune of another, such coroner shall speedily inform one or more of the justices of the peace of the same county thereof, to the intent that the person killing or being in any way instrumental in such death, may be apprehended, examined, and secured in order for trial.

Cases in which justice of the peace may act for the coroner.

SECT. 16. In every case where the coroner shall be absent from the county, or unable to attend, it shall be lawful for any justice of the peace of the proper county to hold an inquest over any dead body; which justice shall proceed in all respects as coroners are directed to do by the foregoing provisions, and shall in all cases be governed by the provisions and subject to the penalties of this chapter.

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CHAPTER 57.

OF PRISONS AND PRISON BOUNDS.

SECTION

1. Prison.
2. Duty of grand jury to examine prison, &c. Duty, &c. of circuit court.
3. Sheriff to be keeper, &c.
4. Sheriff may collect costs of subsistence, &c., from prisoner in a civil case;
5. Or from plaintiff.
6. Defendant may make affidavit and give notice that he cannot support himself.
7. Notice, how given.
8. Same, if clerk's office in another county.
9. Plaintiff in such case shall support prisoner, &c.;
10. Or sheriff may discharge prisoner.
11. Case in which costs of subsistence shall be taxed against plaintiff.
12. Against prisoner.

SECTION

13. In criminal case, sheriff, how paid for keeping prisoner, &c.
14. Sheriff arresting party shall retain copy of process; effect in evidence.
15. How sheriff shall keep commitments, warrants, &c.
16. Shall be delivered to successor.
17. Prisoner escaping and retaken in three months.
18. Same subject.
19. Defence, how pleaded and shown.
20. Prison bounds.
21. Who entitled thereto.
22. Bond for the prison bounds.
23. Sheriff's liability and duty in taking such bond.
24. Suit on such bond.
25. Sheriff violating provisions of this chapter may be indicted.

SECTION 1. There shall be established and kept in every county, by authority of the board of county commissioners, and at the expense of the county, a prison, to be used for the safe keeping of all prisoners lawfully committed to the same. Prison.

SECT. 2. The grand jury, at each term of the circuit court, in each county, shall make personal inspection of the condition of the county prison, in regard to the sufficiency of the same for the safe keeping of prisoners, their convenient accommodation and health, and inquire into the manner in which the same has been kept since the last term; and the court shall give this duty in special charge to such grand jury, and shall make and enforce all necessary orders upon the board of commissioners and others necessary to carry into effect the objects designed by this section. Duty of grand jury to examine prison, &c. Duty of circuit court.

SECT. 3. The sheriff of the county, by himself or deputy, shall keep the jail thereof, and shall be responsible for the manner in which the same is kept; he shall keep separate rooms for the sexes, except where they are lawfully married; he shall provide proper meat, drink, and fuel for all prisoners, if they have no other convenient way of supplying themselves therewith. Sheriff to be keeper, &c.

SECT. 4. Every prisoner confined on civil process shall be liable to pay the expense of the supplies so furnished, and the amount being ascertained to the satisfaction of the justice or court by authority of whose process such prisoner was arrested or committed for the same, the sheriff shall be entitled to his fee bill against such prisoner, to be collected as in other cases. Sheriff may collect fees, &c. of prisoner;

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PART IV.

Or plaintiff.

SECT. 5. If the same cannot be collected from such prisoner, the sheriff shall have his fee bill against the plaintiff in such suit or prosecution, to be collected as in other cases.

Defendant may give notice and make affidavit that he cannot support himself.

SECT. 6. If any prisoner so confined on civil process shall make affidavit before any person authorized to administer oaths, and file the same with the proper sheriff, setting forth that he is unable to support himself in prison, the said sheriff shall notify the plaintiff in such action, his agent, or attorney, of the same, if any of them shall be a resident of his county.

Notice, how given.

SECT. 7. Such notice shall be given by the service of a copy of such affidavit, and if the plaintiff, his agent, or attorney, shall not reside within such county, the copy of such affidavit shall be filed in the office of the clerk of the proper court, or of the justice from whence the process issued.

Same, if clerk's office in another county.

SECT. 8. If the office of the clerk of such court shall not be within the same county, then such copy shall be directed to such clerk, and sent by due course of mail.

Plaintiff shall furnish support of prisoner;

SECT. 9. The plaintiff in such action shall furnish such sheriff with the sums necessary for the daily support of such prisoner, within twenty-four hours after service of notice as aforesaid, dating the same from the time of delivery to such plaintiff, his agent, or attorney, or from the time of filing in the office of the clerk or justice, or deposit in the proper postoffice, of all which the sheriff's return shall be prima facie evidence.

Or sheriff may discharge prisoner.

SECT. 10. If not so furnished, the sheriff may discharge the prisoner, and his costs for the copy of such affidavit, mileage, and return, shall be taxed as other costs in the case.

Case in which costs of support shall be taxed against plaintiff.

SECT. 11. When such expense of support is incurred before judgment, and is paid by the prisoner, and he shall recover in the action, the same shall be taxed with other costs against the plaintiff.

Against defendant.

SECT. 12. Where such costs are paid by the plaintiff, and he shall recover in such action, the amount shall be taxed with other costs against the defendant.

In criminal case, sheriff, how paid for keeping prisoner, &c.

SECT. 13. When any prisoner is committed for crime, or in any suit on behalf of the state, the county board shall allow the sheriff his reasonable charge for supplying such prisoner, and the amount thereof shall be charged to such prisoner as costs in such suit or prosecution if the state shall be entitled to recover costs therein.

Sheriff arresting party shall retain copy of process.

SECT. 14. When any prisoner is confined by virtue of any writ or process, directed to or executed by the sheriff, and which shall require to be returned to the office or court from which it issued, such sheriff shall keep a copy of the same, together with his return made thereon; which copy, duly certified by such sheriff, shall be prima facie evidence of his right to retain such prisoner in custody.

Its effect in evidence.

Sheriff shall keep all commitments, &c. in a box.

SECT. 15. All warrants, mittimuses, writs, and instruments of every kind, or attested copies thereof, by which any prisoner may be committed, enlarged, or liberated, shall be regularly en-

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dorsed and filed, and safely kept in a suitable box by such sheriff, or by his deputy acting as jailor.

Shall be delivered to successor.

SECT. 16. Such box, with its contents, shall be delivered to the successor of the officer having charge of the prison.

Prisoner escaping and retaken in three months.

SECT. 17. If any prisoner confined on civil process shall violently escape from prison, without the connivance of the sheriff or keeper, and such prisoner shall be retaken and recommitted to the prison whence he escaped, within three months next after such escape, such recommitment shall operate to bar any recovery against the sheriff for such escape, except for the costs of any action that shall have been previously commenced against him therefor.

Same subject.

SECT. 18. If judgment in any such action for escape shall have been rendered against the sheriff before the expiration of three months, such recommitment of the prisoner as mentioned in the next preceding section shall operate as a satisfaction of all such judgment, except the costs.

Defence, how pleaded and shown.

SECT. 19. In any action brought against a sheriff for the escape of any prisoner, such sheriff shall have the right of pleading the general issue, and giving this chapter and all other special matters in evidence.

Of the prison bounds.

Prison bounds.

SECT. 20. The prison bounds of each county in this state shall extend to and be bounded by the limits of such county.

Who entitled thereto.

SECT. 21. Every person imprisoned in a civil action shall be allowed the privilege and benefit of the prison bounds, but shall in nowise be allowed to pass over or beyond the same.

Bond for the prison bounds.

SECT. 22. To entitle himself thereto, such prisoner shall deliver to the sheriff a bond payable to the person at whose suit he is imprisoned, with a penalty in double the amount of the debt or demand for which he was committed, with sufficient surety, resident in the county, to the satisfaction of the sheriff, conditioned that from and after the execution of such bond he will continue a true prisoner within the limits of such prison bounds until discharged by law.

Sheriff's liability and duty in taking such bond.

SECT. 23. The sheriff shall be liable for the solvency of such surety at the time of the taking of such bond; and shall have power to require and take evidence as to such surety when such bond is offered for his acceptance.

Suit on such bond.

SECT. 24. If the condition of such bond be broken, the sheriff shall not be liable therefor, but shall, on demand, deliver such bond to the proper person, who may sue and recover thereon.

Sheriff violating provisions of this chapter may be indicted, etc.

SECT. 25. Any sheriff or his deputy, being the keeper of any such prison, who shall fail or refuse to fulfil and perform any duty required of him by the provisions of this chapter, may be indicted therefor, and on conviction, be fined in any sum not exceeding five hundred dollars, and also be liable to the action of any person injured.

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PART IV.

CHAPTER 58.

OF THE APPOINTMENT OF CIRCUIT PROSECUTORS AND THEIR DUTIES.

SECTION
1. Prosecuting attorney, how elected.
2. His duties.
3. Oath.
4. Bond.
5. Where filed—action thereon.
6. Vacancy, how supplied.
7. Salary.
8. Prosecuting attorney pro tem., how appointed—compensation.
9. Clerk shall certify allowance, etc.
10. Treasurer of state shall pay such allowance, etc.

Prosecuting attorney, how elected.

SECTION 1. There shall be a circuit prosecutor appointed in each judicial circuit in this state, who shall be chosen by joint ballot of the Senate and House of Representatives, and shall hold his office for two years from and after his election.*

His duties.

SECT. 2. It shall be the duty of the circuit prosecutor in each judicial circuit, to prosecute all pleas, plaints, indictments and presentments, and prosecute all suits against delinquent sheriffs and collectors of the state and county revenue, and all other persons who now are, or may hereafter be indebted to the state, or any of the counties in his circuit, where the state or county may be a party, except in cases where complaint shall be made in the name of the state for the benefit of some third person.

His oath.

SECT. 3. The said prosecutor, before he enters upon the duties of his office, shall take an oath or affirmation, which oath or affirmation shall be administered by the president judge of the circuit for which he may be appointed, faithfully to discharge the duties of his office; which oath or affirmation the president judge shall administer and endorse on the back of the commission.

Bond.

SECT. 4. He shall moreover execute a bond, with surety to be approved by the president judge aforesaid, in the penalty of five thousand dollars payable to the state of Indiana, conditioned for the faithful discharge of his duty as prescribed by law, and for the prompt payment of all sums of money that may come to his hands by virtue of said office, to the person or persons authorized to receive the same.

Where filed.

Action thereon.

SECT. 5. Such bond after being approved by the president judge, shall be forwarded to the office of the secretary of state, to be there filed; and suit may be brought on the same for delinquency and defalcation, as in case of other civil officers.

Vacancy, how supplied.

SECT. 6. Whenever a vacancy shall happen by the death, resignation or removal from office, of the prosecutor in any circuit in this state, it shall be the duty of the governor, upon be-

* By another act passed during the same session, and printed in this volume, prosecuting attorneys are to be elected by the people. As to the effect of the latter statute, see post, chapter 59, section 21.

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ing notified of the same, to appoint some fit person to fill such vacancy until the next meeting of the general assembly. ARTICLE 1.

SECT. 7. Each prosecutor in this state shall receive as a salary, the sum of one hundred and fifty dollars per annum, except the prosecutor in the judicial circuit of which the county of Marion forms a part, who shall receive the sum of two hundred dollars per annum, payable quarterly. Salary.

SECT. 8. If any prosecutor shall fail to attend the regular term of any circuit court within the circuit for which he was elected, it shall be the duty of the court to appoint some person to do and discharge the duties of prosecutor during the term, and to make and allow such person a reasonable compensation for discharging such duties, which allowance shall be entered in the order book of said court. Prosecuting Attorney pro tem., how appointed. Compensation.

SECT. 9. It shall be the duty of the clerk of the court to make out a copy of such appointment, together with the order for compensation, and certify the same under his hand and affix thereto the seal of the court; and the same upon being presented to the auditor of state, shall be by him audited and the amount of such allowance paid out of the state treasury. Clerk shall certify allowance &c.

SECT. 10. It shall be the duty of the treasurer, upon the payment of any such allowance, to charge the amount so paid to the account of the regular prosecutor of such circuit, and to retain said amount out of the annual salary of such prosecutor. Treasurer of state shall pay amount &c.

THOMAS J. HENLEY,
Speaker of the House of Representatives.
THOMAS D. WALPOLE,
President, pro tem., of the Senate.

APPROVED FEBRUARY 11, 1843.

SAM. BIGGER.

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CHAPTER 59.

OF THE REPEAL OF STATUTES; AND SOME GENERAL PROVISIONS CONCERNING THE REVISED STATUTES.

SECTION
1. What acts shall be deemed the Revised Statutes.
2. When to take effect.
3. Rules of construction.
4. Repeal of acts, etc.—exceptions.
5. Act establishing State Bank.
6. Wabash and Erie canal.
7. System of internal improvements.
8. As to acts of the present session in relation to the matters embraced in the last two sections.
9. State prison.
10. Effect as to proceedings, etc.
11. As to crimes, etc.
12. Suits and prosecutions.
13. Officers.
14. Fees and salaries.
15. Taverns and groceries.
16. Enumeration of subjects as to which any existing acts are not repealed.
17. Enumeration of acts not repealed.
18. Last section qualified.
19. Acts not repealed and which are printed with the Revised Statutes.
20. The term "acts," etc., defined.
21. Conflict of certain laws.
22. How certain acts printed.
23. Repeal of act—its effect in certain cases.
24. Revised Statutes, how printed.
25. When this act to be in force.

What acts shall be deemed the Revised Statutes.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That the acts passed at the present session of the general assembly, entitled as follows:

1. "An act concerning the boundaries, jurisdiction, divisions, civil government, and internal administration of the state of Indiana;"

2. "An act concerning the acquisition, the enjoyment, and the transmission of property, real and personal; the domestic relations, and other matters connected with private rights;"

3. "An act concerning courts and their officers and actions, and proceedings in civil cases;"

4. "An act concerning crimes and punishment, and proceedings in criminal cases,"

Shall be denominated "The Revised Statutes."

When to take effect.

SECT. 2. All provisions contained in the Revised Statutes shall take effect and go into operation from and after their publication, except as otherwise therein provided.

Rules of construction.

SECT. 3. In the construction of all statutes, the rules embraced in this section shall be observed, unless such construction would be inconsistent with the manifest intention of the legislature, or repugnant to the context of the same statute:

1. No act or part of an act, repealed by another act of the general assembly, shall be deemed to be revived by the repeal of such repealing act.

2. Every word importing the singular number only, may extend and be applied to several persons or things as well as to one person or thing; and every word importing the plural number only, may extend and be applied to one person or thing as well as to several persons or things; and every word importing

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the masculine gender only, may extend and be applied to females as well as to males.

3. The words "insane person," or the word "insane" as applied to persons, shall be construed to include every idiot, non compos, lunatic, and distracted person.

4. The word "month," shall be construed to mean a calender month unless otherwise expressed, and the word "year," a calender year unless otherwise expressed.

5. The word "oath," shall be construed to include an affirmation; and the word "sworn," shall be construed to include the word "affirmed."

6. The word "person" may extend and be applied to bodies politic and corporate as well as to individuals.

7. The word "state" when applied to the different parts of the United States, may be construed to include the District of Columbia, and the several territories; and the words "United States," may be construed to include the said district and territories.

Repeal of acts &c.

SECT. 4. All acts and parts of acts, the subjects whereof are revised and re-enacted in the Revised Statutes, or which are repugnant to the provisions therein contained, together with the provisions of such acts as have not been revised and consolidated in these Revised Statutes, shall be repealed, from and after publication as aforesaid, with the exceptions and limitations expressed in this chapter.

Exceptions.

Act establishing a state bank.

SECT. 5. An act entitled "An act establishing a state bank," approved January 24th, 1834, and all acts and parts of acts and joint resolutions amending and modifying the same or any part thereof, and all acts supplemental or relating thereto, which have been unrepealed or not modified by the Revised Statutes, are declared to continue and be in force, as if the Revised Statutes had not been enacted.

Wabash and Erie canal.

SECT. 6. All acts and parts of acts relating to or in any way affecting the Wabash and Erie Canal, and also all acts relating to or in any way affecting the continuation of said canal, or any part thereof to Terre Haute, and all acts and parts of acts supplemental to any such act or parts of acts which have not been expressly repealed by the Revised Statutes, or by some act of the present or some preceding session of the general assembly, and acts and parts of acts granting any privileges, rights, relief, or immunities to any persons relating to said canal, or to the canal lands, or canal loans, or funds, or to the purchasers of canal lands, or to settlers thereon, are declared to be continued and remain as if the Revised Statutes had not been enacted.

System of internal improvements.

SECT. 7. An act entitled "An act to provide for a general system of internal improvements," approved January 27th, 1836, and also, all acts and parts of acts relating, or supplemental to such system of internal improvements, and all acts and parts of acts repealing or modifying any such first mentioned act or any part thereof, or any subsequent act or part of an act rela-

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ting to, affecting, modifying, or repealing any part of any of the acts coming within the purview and meaning of the provisions of this section, except as provided in the next section, shall continue and be as if the Revised Statutes had not been enacted.

As to acts of present session in relation to the matters embraced in the last two sections.

SECT. 8. Any provisions contained in the revised statutes expressly modifying or contravening any of the provisions contained in any of the acts coming within the scope and meaning of the two last preceding sections; and also all acts passed at the present session of the general assembly relating to or in anywise amending, contravening, or repealing any of such acts or parts of acts shall be construed to be of the same force and effect as if such two sections had not been enacted.

State prison.

SECT. 9. All acts and parts of acts relating to the state prison, or the erection of a new prison, passed at the present or any previous session of the general assembly, and which have not been expressly repealed, shall continue and be in force as if the revised statutes had not been enacted.

Effect as to proceedings, &c.

SECT. 10. The repeal of any act or acts by the provisions of this chapter, shall not affect any thing or act done, or any right accruing, accrued, or established, or any suit or proceeding had or commenced in any civil case, prior to the time that the revised statutes shall go into effect; but the proceedings in every such case shall be conformed when necessary to the provisions of the revised statutes.

As to crimes &c.

SECT. 11. No crime or offence committed and no penalty or forfeiture incurred under the provisions of any of the acts hereby repealed prior to the time when such repeal shall take effect, shall be affected by the repeal; except that where any punishment, penalty, or forfeiture, shall have been mitigated by the provisions of the revised statutes, such provisions may be extended and applied to any judgment to be pronounced after such repeal.

Suits and prosecutions.

SECT. 12. No suit or prosecution pending at the time of such repeal, for any offence committed, or for the recovery of any penalty or forfeiture incurred under any of the acts hereby repealed, shall be affected by such repeal, except that the proceedings in such suit or prosecution shall be conformed, when necessary, to the revised statutes.

Offices.

SECT. 13. All persons who, at the time when the said repeal shall take effect, shall hold any office under any of the acts hereby repealed, shall continue to hold the same, according to the term thereof; but such office shall be held subject to the provisions of law in force after such repeal shall take effect; and all vacancies which may occur or be about to occur, in any of said offices, shall be supplied by election or appointment, as the case may require, according to the provisions of the revised statutes; excepting from the provisions of this section, all those offices which may have been abolished, and those as to which a different provision has been made by the Revised Statutes. *

* See ante page 104, sections 51, 52.

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Fees and salaries.

SECT. 14. All acts and parts of acts regulating the fees and salaries of the several officers and persons therein named, or which are amendatory of or supplemental to any such act or acts, and which are now in force, shall continue and be in full force as if the Revised Statutes had never been enacted, except so far as the same are repugnant to, or are modified or repealed by any special provisions of the Revised Statutes.

Taverns and groceries.

SECT. 15. All acts and parts of acts relating to the regulation of taverns and groceries and the retailing of spirituous liquors; and all acts amendatory thereof or supplemental thereto, or modifying the same, not revised or re-enacted and consolidated in the Revised Statutes, and which are not modified by any act of the present or of any previous session of the general assembly, shall continue to be in force and effect, as if the Revised Statutes had not been enacted.

Enumeration of subjects as to which any existing acts are not repealed.

SECT. 16. All acts coming within the description, purview, meaning, or intent of the following provisions of this section, which are now in force and unrepealed, and all acts and parts of acts amending or modifying the same, or supplemental thereto, now in force and unrepealed, shall continue and remain in as full force and effect as if the Revised Statutes had not been enacted, to wit:

Relief.

1. All acts for the relief or benefit of any officer, collector of the revenue, trustee, guardian, executor, administrator, individual or individuals, corporation, shool districts, congressional and civil townships, and counties.

County business.

2. All acts and parts of acts relating to, or authorizing the mode of doing county business, otherwise than by a board of three county commissioners in the counties named in such acts and parts of acts.

Corporations.

3. All acts incorporating any company, church, congregation, society, library, lyceum, school, or school district, academy, seminary, college, university, (except the Indiana university,) town, city, or any company or association whatever.

Privileges, exemptions &c.

4. All acts and parts of acts granting or conferring any privileges, rights, or exemptions to or upon any individual or individuals, town, township, school, or school district, congressional town ship, county, or any public or private corporation.

Private matters.

5. All acts and parts of acts relating to private or local matters and not of general application.

Legalizing acts &c.

6. All acts and parts of acts legalizing or confirming the acts of any state, county, township or district officer, or trustee, or any public agent, or any corporation, or of the directors or agent thereof.

Juries.

7. All acts and parts of acts allowing or providing any particular mode of summoning grand and petit jurors in the counties therein named.

Location, &c. of roads.

8. All acts and parts of acts establishing, declaring, confirming, changing, vacating, or authorizing the location, relocation, running, laying out, changing, or vacating of any state road, and all acts confirming or legalizing the acts of any road commissioner.

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Supervisors, &c.

9. All acts and parts of acts relating to and governing roads and highways, and regulating the duties of supervisors of roads and highways, or relating thereto, or directing or authorizing a road tax or assessment in any county or counties expressly named in such act or acts.

County seats, towns, streets, &c.

10. All acts and parts of acts, establishing, changing, or removing county seats, changing the names of towns, vacating towns, parts of towns, streets, and alleys, or authorizing or confirming additions to towns, or the laying out, establishing, or changing streets or alleys in any town.

Changing names.

11. All acts and parts of acts changing the names of individuals.

Legalizing marriages.

12. All acts legalizing marriages.

Granting divorces.

13. All acts granting divorces.

Authorizing any act, duty, &c.

14. All acts and parts of acts authorizing or directing any officer or public agent, trustee, or commissioner, to do or perfect any particular act or duty, or to correct or remedy any omission, defect, or mistake.

Legalizing acts, &c. of congregation, &c.

15. All acts and parts of acts legalizing the acts and proceedings of any church, congregation, religious society, school, masonic lodge, or the order of Independent Oddfellows, organized under the provisions of "An act for the appointment of trustees to receive deeds for lots or land given or purchased for the use of schools, meeting houses, or masonic lodges," approved February 10, 1831.

Justices of the peace.

16. All acts and parts of acts specially providing for the election of additional justices of the peace in any town or township.

As to officers, individuals, &c.

17. All acts and parts of acts authorizing, directing, or permitting any individual or individuals, officer or officers, public agent or agents, or any corporation or their officers, agent or agents, to do, perform, alter, change, perfect, revise, or omit any act, duty, or thing which, without such act or part of an act, they could not legally have done, performed, altered, changed, perfected, revised, or omitted.

Destruction of records, &c. by fire, &c.

18. All acts and parts of acts relative to the destruction of the records and papers of any court, clerk's office, recorder's office, or county, by fire or otherwise.

Schools in Clark's grant.

19. All acts and parts of acts relating to schools, school lands, or school funds in Clark's grant and Clark county.

Michigan road.

20. All acts and parts of acts relating to the Michigan road and Michigan road lands.

Judicial circuits.

21. All acts and parts of acts dividing the state into judicial circuits, and regulating the times of holding courts, shall be and remain as if the Revised Statutes had not been enacted.

Relief to purchasers, &c. of public lands, &c.

22. All acts and parts of acts relating to or granting any rights, privileges, relief, or exemption, to any person or persons settled upon or purchasers of canal or other public lands, or school, seminary, or university lands, or saline reserve lands, or indebted by reason of any such lands, or any funds or interest arising therefrom or due thereon.

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23. All special acts and parts of acts relating to any of the debts, state bonds, state liabilities, creditors of the state, state debtors, or defaulters to the state, and also the borrowers of any public school, seminary, college, saline, or trust funds whatever. State creditors and debtors, &c.

24. All acts and parts of acts converting any funds into bank stock, and all acts and parts of acts amendatory of or supplemental thereto. Bank stock.

25. An act entitled, "An act to incorporate several townships in the county of Dearborn," approved February 7, 1825; and an act entitled, "An act to amend and revise an act to incorporate the several townships in the county of Dearborn, approved February 7, 1825," approved February 1, 1834. Incorporating townships.

26. An act providing for a more uniform mode of doing county business in the several counties therein named, approved February 17, 1838. County business.

27. All acts revising or amending any of the acts embraced in the last two preceding clauses of this section, or which are supplemental thereto. Same.

28. All acts and parts of acts relating to the organization of the militia of the state of Indiana, its officers, and also any particular company or companies. Militia.

29. An act authorizing the issue of five dollar treasury notes for the redemption of fifty dollar treasury notes now in circulation, approved January 31, 1842. Fifty dollar treasury notes.

30. All acts and parts of acts authorizing the issuing of treasury notes, and the receiving, paying out, and redemption thereof. Treasury notes.

31. All acts and parts of acts confining voters to their townships in the counties therein named. Voters.

SECT. 17. Nothing contained in the Revised Statutes shall be construed to affect, repeal, or impair any thing contained in the following acts, or acts amendatory of or supplemental thereto, except as provided in the next section: Enumeration of acts not repealed, &c.

1. An act to provide for the continuance of the construction of all or any part of the public works of this state by private companies, and for abolishing the board of internal improvements, and the offices of fund commissioner and chief engineer, approved January 28, 1842.

2. An act for the completion of the Wabash and Erie canal, from the mouth of Tippecanoe river to Terre Haute, approved January 1, 1842.

3. An act to provide for the election of a commissioner on the Wabash and Erie canal west of Tippecanoe river, approved January 24, 1842.

4. An act to provide for the preservation of the southern end of the southern division of the Central canal, approved January 29, 1842.

5. An act providing for the classing and selecting the lands not yet offered for sale, belonging to the Wabash and Erie canal, east of Tippecanoe river, approved January 22, 1842.

6. An act to incorporate the Whitewater Valley Canal Company, approved January 20, 1842.

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Last section qualified.

SECT. 18. Nothing contained in the acts enumerated in the last section relating to the state agent, agents of the Madison and Indianapolis railroad, the Whitewater canal, and the New Albany and Vincennes Macadamized road, shall be deemed to contravene anything relating to those officers contained in the Revised Statutes relating to the same subjects.

Acts not repealed, and which are printed with the Revised Statutes.

SECT. 19. Nothing contained in the Revised Statutes shall affect or repeal anything contained in the acts specified in this section, except so far as the proceedings under the same may be modified by any provisions of such statutes:

1. An act relative to fugitives from labor, approved January 22, 1824.

2. An act concerning free negroes and mulattoes, servants and slaves, approved February 10, 1831.

3. An act authorizing the arresting and securing of fugitives from justice, approved February 12, 1838.

4. An act regulating the mode of keeping stallions and jacks, approved February 17, 1838.

5. An act regulating weights and measures, approved January 21, 1818, and all other acts on the same subject which are now in force.

6. An act to recover the value of sheep killed by dogs, approved January 22, 1840.

7. An act applying certain funds to the purposes of education, approved January 31, 1842.

8. An act to prohibit the making, issuing, or circulating small notes or bills, approved January 20, 1841.

9. An act for the relief of the Miami and other Indians, approved February 3, 1841; and a joint resolution suspending the fifth section of "An act for the relief of the Miami and other Indians," approved February 10, 1841.

10. An act to prevent the spread of the disease commonly called the glanders among horses, approved January 14, 1842.

11. An act to keep in repair the Cumberland and Michigan roads, approved February 13, 1841.

12. An act declaring what laws shall be in force, approved January 2, 1818.

13. An act providing for the election of United States senator and other officers by viva voce vote of the legislature, approved February 3, 1837; and "An act to repeal an act to provide for the election of United States senator and for other purposes, approved February 3, 1837," approved December 8, 1837;

And the acts enumerated in the above section shall be published in the same volume with the Revised Statutes.

The term "acts," &c. defined.

SECT. 20. The terms "acts" and "parts of acts," and the term "act" shall be construed to include joint resolutions and parts of joint resolutions.

Conflict of certain acts.

SECT. 21. Whenever any act passed at the present session of the general assembly, separate from the Revised Statutes, shall conflict with or contravene any of the provisions contained

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in the Revised Statutes, any such provision or provisions of the Revised Statutes shall be abrogated and of no force or effect as to the subject matter coming within the purview of such act or acts.

How certain acts printed.

SECT. 22. All acts of a general nature passed at the present session of the general assembly, not embraced in the Revised Statutes, but contravening the same, shall be printed in the same volume with the Revised Statutes; and may, if the same can be done properly, be classed and numbered with, or in the appropriate chapter or article as a part thereof.

Repeal of act; its effect.

SECT. 23. The repeal, by this act, of any statute, act, or part of an act, before repealed, shall not be construed as a declaration or implication that such statute, act, or part of an act has been in force at any time subsequent to such first repeal.

Revised Statutes, how printed.

SECT. 24. The Revised Statutes shall be printed in the order of the several parts, as specified in the enrolled bills, so that each part shall embrace and contain the subjects appropriately belonging thereto: the chapters shall be numbered from one, in numerical order, to the end of the Revised Statutes: the articles shall be numbered from one, in numerical order, to the end of each chapter; and the sections shall be numbered from one, in numerical order, to the end of the chapter, in all cases.

When this act to be in force.

SECT. 25. This act to be in force from and after its passage, so far as relates to the last preceding section and the section authorizing the printing of certain statutes with the Revised Statutes.

THOMAS J. HENLEY,
Speaker of the House of Representatives.
THOMAS D. WALPOLE,
President, pro tem., of the Senate.

APPROVED, FEBRUARY 11, 1843.

SAM. BIGGER.

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STATUTES NOT REVISED,

BUT WHICH ARE

CONTINUED IN FORCE.*

CHAPTER 60.

AN ACT DECLARING WHAT LAWS SHALL BE IN FORCE.

[APPROVED JANUARY 2, 1818.]

The common law of England etc., in force.

Be it enacted by the general assembly of the state of Indiana, That the common law of England, all statutes or acts of the British parliament made in aid of the common law, prior to the fourth year of the reign of king James the first, excepting the second section of the sixth chapter of forty-third Elizabeth, the eighth chapter, thirteenth Elizabeth, and ninth chapter, thirty-seventh Henry eighth, and which are of a general nature, not local to that kingdom, and not inconsistent with the laws of this state; and, also, the several laws in force in this state, shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority.

CHAPTER 61.

AN ACT AUTHORIZING THE ARRESTING AND SECURING FUGITIVES FROM JUSTICE.

[APPROVED FEBRUARY 12, 1838.]

Fugitives from justice fleeing into this state, how proceeded against.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That if any person shall commit any crime in any of the United States or the territories thereof, and shall flee into this state, it shall be lawful for any judge of the supreme or circuit court, or any justice of the peace within this state, on the oath or affirmation of any person charging such fugitive with a crime, to issue his warrant and cause such fugitive to be

*See ante, page 1028, section 19.

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arrested and brought before him, and after hearing the proofs and allegations for and against such fugitive, if, in the opinion of such judge or justice, the proof is evident or presumption strong, as to the guilt of the person charged, it shall be the duty of the judge or justice to commit such fugitive from justice to the common jail of the county where such arrest may be made, for any length of time not exceeding one month; or, in case any sheriff, coroner, or constable shall have pursued such fugitive, it shall be the duty of such judge or justice to give such sheriff, coroner, or constable a warrant to remove such fugitive; which shall be a sufficient authority to remove such fugitive from this state to the state or territory from which he fled.

Fugitives fleeing from one county to another in this state, how arrested.

SECT. 2. That when any warrant, capias, or other process of a criminal nature shall issue from any judge, justice, or other authority competent to issue the same, and shall be put into the hands of any constable or other person properly authorized to execute the same against any person charged with the commission of any offence against the laws of this state, or when any person shall have escaped from legal custody, it shall and may be lawful for the officer holding such warrant, or from whose custody such person shall have escaped, to pursue such person to any county within this state and arrest and secure him or her; and such officer shall have authority, by virtue of the powers herein given, to take the person thus arrested, to the county in which the offence was committed, or from which the escape was made: provided, however, that it shall be the duty of the said officer, previous to making any such arrest in any other than his own county, to go before some justice of the peace in the county in which the fugitive is supposed to be, and make oath that the process was regularly issued in the county from which such fugitive fled, or, in case of escape, that he is in pursuit of a person, naming him, who has escaped from legal custody; and when such oath shall be made, it shall be the duty of such justice, when a warrant is produced, to endorse his name, as such justice, on the back of said warrant, or in case of escape and pursuit, issue a warrant directed to such officer, authorizing and commanding him to seize such fugitive, and retake him to the county from which he may have escaped; which endorsement or new warrant shall give to such officer as full and ample authority in all respects, to make such arrest or recaption, as he would have in the county in which he was elected or appointed.

Oath being made in distant county, justice to endorse his name on the warrant.

Judges or justices of the peace may cause fugitive to be arrested and examined.

SECT. 3. That if any person shall commit any crime in any county within this state, and shall flee or remove into another county, it shall be lawful for any judge of the supreme court or circuit court, or for any justice of the peace within the county to which such person shall have fled or removed, on the oath or affirmation of any person charging such fugitive with such crime, (either directly or on the belief of the affiant) to issue his warrant and cause such fugitive to be arrested and brought before him; and after hearing the proofs and allegations against such

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fugitive, if in the opinion of such judge or justice of the peace, the proof or presumption is strong as to the guilt of the person charged, it shall be the duty of the judge or justice of the peace to make out an order under his hand and seal, commanding some constable of his county to convey such fugitive to the county in which he committed the offence charged against him, and to deliver him to some judge of the circuit court or justice of the peace in such county, together with the order of the judge or justice before whom the said fugitive was examined: and it shall be the duty of such judge or justice to whom such fugitive shall be delivered, to cause him to be committed to the custody of some constable or sheriff of the county for safe keeping; and to forthwith summon the person or persons against whose person or property the said offence shall have been committed, or some witness or witnesses thereto, and such judge or justice shall, on the examination, be governed in all respects as though said complaint had been made and affidavit had been taken before him in the first instance. And the constable who shall convey such fugitive from the county where he was first arrested to the county in which the offence was committed, shall receive the same fees for such service as are by law allowed to sheriffs for like services, and subject to the same rules and conditions.

When no sufficient prison, fugitive may be sent to jail of next county.

SECT. 4. That when there is no sufficient prison in any county wherein any criminal offence shall have been committed, it shall be lawful for any judge of the circuit court of such county, upon application of the sheriff thereof, to order any person charged with a criminal offence, and committed or ordered to be committed to prison, to be sent to the jail of the county nearest having a sufficient jail; and the sheriff of such county shall, on exhibit of such judge's order, receive and keep in custody, in the jail of his county, the prisoner ordered to be committed as aforesaid, at the expense of the county from which such prisoner was sent; and the said sheriff shall, upon the order of the circuit court, or a judge of said county, redeliver such prisoner when demanded.

CHAPTER 62.

AN ACT RELATIVE TO FUGITIVES FROM LABOR.

[APPROVED JANUARY 22, 1824.]

How persons of another state claiming service of one in this, shall proceed.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any person or persons of any state or territory, having any claim to the service of any person or persons within this state, may, in person or by attorney, go before

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the clerk of any circuit court within this state, and make affidavit, that he, she, or they, or the persons for whom he or they are agents or attorneys, have or has a just claim to the service of such fugitive person or persons, agreeably to the laws of the state from which such fugitive or fugitives from labor, hath or have fled, as also the name or names of the owner or owners; (when affidavit is made by attorney;) which affidavit shall be taken by such clerk and filed in his office; whereupon it shall be the duty of such clerk to issue his warrant, directed to the owner or owners of such fugitive from labor, or to his, her, or their agent or attorney, commanding him or them forthwith to carry such fugitive before some justice of the peace or judge of the circuit court, or supreme court within this state; and it shall be the duty of the clerk to affix the county seal thereto, and the warrant, so sealed as aforesaid, shall be sufficient authority for the person in whose possession the some may be, to authorize him to arrest such fugitive from labor, wherever he may be found in this state, and him to convey before some justice of the peace, judge of the circuit or supreme courts, that may reside in the county or district where such fugitive shall be found.

Duty of clerk of circuit court.

Judge or justice may commit or let to bail.

SECT. 2. It shall be the duty of such justice of the peace or judge, (as the case may be,) to cause such fugitive from labor to be taken into custody, and the same to commit or let to bail until the parties shall be ready for trial, which time shall not exceed sixty days, and shall be at the discretion of the justice or judge, upon the circumstances of the case made known by affidavit; and it shall be the duty of such justice of the peace or judge, as the case may be, to hear and determine the case in a summary way; and if such justice or judge shall be of opinion, that such fugitive did owe service according to the claim sworn to, he shall give such owner or agent a certificate of that fact, which shall be sufficient authority for such agent or owner, to remove such fugutive from the state: *Provided however*, that either party may appeal by paying the costs of such trial, and giving security for the costs that may accrue on such appeal; and in all cases where an appeal may be taken, it shall be the duty of the justice or judge to require of such fugitive from labor to give security for his appearance and abiding the event of such trial, and on failure thereof, to commit such fugitive to the jail of the county, there to be kept at the expense of the appellant until the time of such trial: *Provided also*, that no such appeal shall be granted to such fugitive from labor, until he or she shall make out and file affidavit, that he or she does not owe service.

Determine in a summary way.

Giving certificate.

Appeal may be granted.

Fugitive may be committed.

Proviso.

SECT. 3. In all cases where an appeal may be granted under the provisions of this act, it shall be the duty of the justice of the peace, or the judge, as the case may be, granting such appeal, to issue his warrant to the sheriff of the county, directing him forthwith to notify the associate judges thereof, or any circuit judge having jurisdiction in such county; whose duty it shall be, when so notified, to attend at the court house of the

Sheriff to notify associate judges.

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county, in which such arrest shall have been made, on the day named in the warrant of the judge or justice as aforesaid, which day shall not be more than five days after the arrest; and it shall be the duty of such sheriff, to summon a good and lawful jury of the county, who shall attend at the time and place appointed for trial, and for failure so to do, shall be subject to like penalties as jurymen are in other cases.

Shall summon a jury.

Proceedings of special ct. may be certified to circuit court.

SECT. 4. That on the appearance of the parties before such special court, if either of the parties shall make it appear to the satisfaction of such court, that they cannot safely go into trial at that time, such court may continue such cause until the ensuing term of the circuit court for said county, and shall send up a transcript of their proceedings to said court, together with the proceedings had before the judge or justice before whom the first proceedings were had; on which the clerk of said circuit court shall docket such suit, where the same shall stand for trial, subject to the same rules of law and proceedings generally as other civil actions are; any thing herein to the contrary notwithstanding.

ACT OF CONGRESS.

AN ACT RESPECTING FUGITIVES FROM JUSTICE, AND PERSONS ESCAPING FROM THE SERVICE OF THEIR MASTERS.

[APPROVED FEBRUARY 12, 1793.]

Fugitive from justice, how demanded by executive of state whence he fled.

SECT. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever the executive authority of any state in the Union, or of either of the territories northwest or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory to which such person shall have fled, and shall, moreover, produce the copy of an indictment found, or an affidavit made, before a magistrate of any state or territory as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and cause the fugitive to be delivered to such agent when he shall appear: but if no such agent shall appear within six months from the time of the arrest, the prisoner may be dis-

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charged. And all costs or expenses incurred in the apprehending, securing, and transmitting, such fugitive to the state or territory making such demand, shall be paid by such state or territory.

Agent to transport him whence he fled.

SECT. 2. *And be it further enacted*, That any agent, appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the state or territory from which he or she shall have fled. And if any person or persons shall, by force, set at liberty, or rescue the fugitive from such agent while transporting, as aforesaid, the person or persons so offending, shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

Penalty for rescuing fugitive.

Fugitives from labor, how reclaimed by master.

SECT. 3. *And be it further enacted*, That when a person held to labor in any of the United States, or in either of the territories northwest or south of the river Ohio, under the laws thereof, shall escape into any other of said states or territory, the person to whom such labor or service may be due, his agent, or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the state, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made, and upon proof, to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested doth, under the laws of the state or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent, or attorney, which shall be sufficient warrant for removing the said fugitive from labor, to the state or territory from which he or she fled.

Penalty for obstructing arrest, rescuing or concealing fugitive from labor.

SECT. 4. *And be it further enacted*, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent, or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent, or attorney, when so arrested, pursuant to the authority herein given or declared, or shall harbor or conceal such person, after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars; which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving, moreover, to the person claiming such labor or service, his right of action for or on account of the said injuries, or either of them.

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CHAPTER 63.

AN ACT REGULATING WEIGHTS AND MEASURES.

[APPROVED, JANUARY 21, 1818.]

County commissioners to procure measures and weights

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That the several boards of county commissioners within this state be, and they are hereby authorized and required to procure for their respective counties, and at the expense of the same, a set of the following measures and weights for the use of their county; that is, one measure of one foot or twelve inches, English measure, so called; also, one measure of three feet or thirty-six inches, as aforesaid; also, one half bushel measure for dry measure, which shall contain one thousand and seventy-five and one fifth solid inches; also, one gallon measure, which shall contain two hundred and thirty-one solid inches; which measures are to be of wood, or any metal the court may think proper; also, one set of weights commonly called avoirdupois weight, and sealed with the name or initial letters of the county inscribed thereon; which weights and measures shall be kept by the clerk of the circuit court of each and every county in this state, for the purpose of trying and sealing the weights and measures used in their counties.

To be kept by the clerk of a circuit court.

When procured, notice to be given.

Persons selling by other weights and measures finable.

SECT. 2. As soon as the several boards of county commissioners shall have furnished the weights and measures as aforesaid, they shall cause notice thereof to be given at the court house door for one month; and any person who shall thereafter buy or sell any commodity whatsoever, by measures or weights, that shall not correspond with the county weights and measures, shall, for every such offence, being legally convicted thereof, forfeit and pay the sum of twenty dollars, for the use of the county seminary where such offence shall have been committed, and also the costs, to be recovered before any justice of the peace for said county. Every person or persons desirous of having his, her, or their weights and measures tried by the county standard, shall apply to the clerk of the circuit court of the county in which he shall live, and if they correspond with the county standard, the clerk shall seal them with the seal provided for that purpose.

Clerk to seal weights, &c.

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CHAPTER 64.

AN ACT PROVIDING FOR THE ELECTION OF UNITED STATES SENATOR AND OTHER OFFICERS BY A VIVA VOCE VOTE OF THE LEGISLATURE.

[APPROVED, FEBRUARY 3, 1837.]

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That hereafter all elections of United States senator, and for all other officers to be elected by the general assembly of this state, shall be viva voce, except the elections of auditor of public accounts, treasurer of state, secretary of state, and president judges of the circuit courts, which elections shall, as heretofore, be by joint ballot of both houses. Election shall be viva voce.

SECT. 2. All laws or parts of laws contravening the above enactment shall be, and the same are hereby repealed.

This act to be in force from and after its passage.

AN ACT TO REPEAL AN ACT ENTITLED, "AN ACT TO PROVIDE FOR THE ELECTION OF UNITED STATES SENATOR, AND FOR OTHER PURPOSES," APPROVED FEBRUARY 3, 1837.

[APPROVED, DECEMBER 8, 1837.]

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That the act entitled, "An act to provide for the election of United States senator, and for other purposes," approved February 3, 1837, be, and the same is hereby repealed, except so much of said act as relates to the election of United States senator. Repeal, except as to United States senator

This act to take effect and be in force from and after its passage.

CHAPTER 65.

AN ACT TO RECOVER THE VALUE OF SHEEP KILLED BY DOGS.

[APPROVED, FEBRUARY 22, 1840.]

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That if any dog or dogs shall kill or injure any sheep hereafter, the owner or owners of any sheep so killed or injured, shall be entitled to recover of the owner or owners of the dog or dogs the value of the sheep so killed or injured, in Relative to dogs and sheep

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any court having competent jurisdiction thereof, any law, usage, or custom to the contrary notwithstanding: provided, however, that the owner or owners of such dog or dogs shall not be so liable, if he, she, or they will kill said dog or dogs on the first offence.

Proviso.

Repeal. So much of any act or acts as comes within the purview of this act be, and the same is hereby repealed.

CHAPTER 66.

AN ACT FOR THE RELIEF OF THE MIAMI AND OTHER INDIANS.

[APPROVED FEBRUARY 3, 1841.]

Capias ad respondendum shall not issue against Indians

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That all laws and parts of laws which authorize the issue and service of the writ of capias ad respondendum, so far as the Miami and other nations of Indians residing in the state of Indiana are concerned, be and the same are hereby repealed.

Process against Indian.

SECT. 2. In all cases hereafter, when suit may be commenced against any Indian or Indians, either in the circuit court or before any justice of the peace, no other writ or process shall issue except a common summons, and no bail shall be required in any case whatever.

Fieri facias only shall issue

SECT. 3. That in all cases where judgment shall be obtained against any Indian or Indians, in any court having jurisdiction to render the same, it shall not be lawful for any writ, except a common fieri facias, to issue against said defendant or defendants; and all laws and parts of laws which authorize the issue and service of the writ of capias ad satisfaciendum, so far as Indians are concerned, be and the same are hereby repealed.

No bail shall be required.

SECT. 4. Should any person or persons, by any fraud or deception whatever, procure to be issued, by any clerk of the circuit court or justice of the peace, any writ of capias ad respondendum, against any Indian or Indians, it shall be the duty of the officer in whose hands the same is placed, to regard said writ as a common summons; and said officer is expressly prohibited from requiring bail in any such case: provided, that in all cases the provisions of this act shall be extended to all persons of Indian descent, who are recognized as members of any tribe residing in the state of Indiana, down to those having one eighth Indian blood.

SECT. 5. No white man or negro shall hereafter have the benefit of any of the legal remedies for the collection of debts hereafter contracted by an Indian within the limits of the state of Indiana, and all contracts hereafter made with Indians shall be null and void.

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This act shall be in force from and after its passage; and it shall be the duty of the secretary of state to make out certified copies of the same, and cause them to be filed in the clerks' offices of the counties of Clinton, Carroll, Cass, Miami, Wabash, Huntington, Allen, and Grant.

A JOINT RESOLUTION SUSPENDING THE FIFTH SECTION OF AN ACT PASSED THE PRESENT SESSION OF THE GENERAL ASSEMBLY, ENTITLED "AN ACT FOR THE RELIEF OF THE MIAMI AND OTHER INDIANS."

[APPROVED FEBRUARY 10, 1841.]

Suspension of fifth section of act previously passed.

Be it resolved by the general assembly of the state of Indiana, That the fifth section of an act passed at the present session of the general assembly, entitled "An act for the relief of Miami and other Indians," be and the same is hereby suspended for the term of five years.

This joint resolution to be in force from and after its passage.

CHAPTER 67.

AN ACT APPLYING CERTAIN FUNDS TO PURPOSES OF EDUCATION.

[APPROVED JANUARY 31, 1842.]

Clerks and justices to pay over to school com'r annually witness fees, etc.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That hereafter it shall be the duty of the several clerks of the circuit and probate courts and all justices of the peace in this state, on the first Monday in August of each year, or within ten days thereafter, to pay over to the school commissioners of their respective counties, who shall receipt therefor, all such fees as may have come into their hands respectively, by virtue of their several offices, at any time prior to the preceding first Monday in August, for any witness, juror, commissioner, appraiser, attorney, constable, sheriff, or other person or officer whatever, which shall not have been duly demanded and received out of the hands of such officer by the person or officer for whom the same may have been received.

Receipt of com'r, etc., to be filed with auditor.

SECT. 2. That it shall be the duty of each of said clerks and justices of the peace, within said ten days in each year, to file with the auditor of his county the receipt that he may have received from the proper school commissioner, which shall be for the aggregate sum so paid over, which receipt shall be accompanied by a schedule of the fees paid for the receipt, describing the cases from which the fees were received, and the

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amount and kind of fees in each case, which schedule shall be verified by the oath of the officer filing the same, that it is full and perfect, agreeably to the provisions of this act; and in case any such officer may have no such fees in his hands on the first Monday in August liable to be paid over as aforesaid, then such officer shall, in like manner, file his affidavit of that fact, within the ten days aforesaid. And whenever any such clerk or justice may go out of office, he shall deliver over to his successor, with the papers of his office, all such fees that may then be in his hands, whatever the length of time may have been, together with a schedule of the same, verified upon oath to be full and perfect, and stating the time when the fees were received, whether it was during the past or the current year, and the time so stated shall be taken, for the purposes of this act, as the time when such successor received said fees, and he shall be governed accordingly.

Fees to be paid to successor.

Penalty for violating this act.

SECT. 3. That should any clerk or justice of the peace neglect, fail, or refuse to comply with the provisions of this act, for each offence, upon being found guilty on presentment or indictment, he shall be fined in any sum not less than five nor more than one hundred dollars.

Affidavit, before whom made.

SECT. 4. That any of the affidavits herein required may be made before the proper county auditor, who is hereby authorized, generally, to administer oaths or affirmations, and such auditor shall be entitled to a fee of twenty-five cents in each case of such returns, to be paid as his other fees are; and each auditor shall open an account with the school commissioner of his county, and keep him regularly charged with all the funds in this act provided to be paid over to him.

Distribution of the fund.

SECT. 5. That the funds so paid over to the several school commissioners shall forever after be a common school fund, to be loaned out as other school funds are, and the proceeds thereof shall be rateably apportioned amongst the several townships for the support of the district schools of the proper county: provided, however, that at any time hereafter it shall be the duty of any school commissioner, upon reasonable demand made, to pay over to any person for whom the same may have been collected, any fees that may have been deposited with such school commisioner, the person demanding such fees having first satisfied such commissioner that he is entitled to receive the same.

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CHAPTER 68.

AN ACT TO KEEP IN REPAIR THE CUMBERLAND AND MICHIGAN ROADS.

[APPROVED JANUARY 31, 1842.]

SECT. 1. *Be it enacted by the General Assembly of the state of Indiana*, That the boards doing county business in the several counties through which the Cumberland and Michigan roads run, are hereby authorized and required to place under the charge of proper supervisors through whose districts any portion of either of the aforesaid roads passes, such portion of either of the said roads as lies in the bounds or limits of such supervisors, whose duty it shall be to keep the same in repair in the same manner, and liable to the same penalties as are precribed by an act relating to public roads and highways, approved February 17, 1838.

Roads to be placed under respective supervisors.

SECT. 2. This act to take effect from and after its passage.

CHAPTER 69.

AN ACT TO PREVENT THE SPREADING OF THE DISEASE, COMMONLY CALLED THE GLANDERS, AMONG HORSES.

[APPROVED JANUARY 14, 1841.]

WHEREAS, the said disease is known to be contagious, and always fatal; Therefore—

Be it enacted by the General Assembly of the state of Indiana, That if any person or persons shall knowingly suffer any horse, mare, or gelding, to be taken or used off of his, her, or their farm or farms, or to run at large while under the influence of said disease, he, she, or they, shall forfeit and pay for every such offence, any sum not less than twenty dollars, nor over fifty dollars, to be recovered by presentment or indictment before any court of competent jurisdiction, for the use and benefit of the county seminary.

Penalty for suffering horses having glanders to run at large.

This act to be in force from and after its passage.

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CHAPTER 70.

AN ACT REGULATING THE MODE OF KEEPING STALLIONS AND JACKS.

[APPROVED FEBRUARY 17, 1838.]

Mode of keeping stallions and jacks.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That it shall not be lawful for any person to keep or let to mares any stallion or jack, within the limits of any town or village in the state, or within two hundred yards thereof, unless such person shall provide an enclosure so arranged as to obstruct the view from all the inhabitants in the town and vicinity as aforesaid. Any person so offending, shall, upon conviction thereof, on presentment or indictment, be fined ten dollars for every such offence.

CHAPTER 71.

AN ACT TO PROHIBIT THE MAKING, ISSUING, OR CIRCULATING SMALL NOTES OR BILLS.

[APPROVED JANUARY 20, 1841.]

Individual issues fraudulent and void.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That all bills of any denomination whatever, hereafter to be issued by any individual or individuals, company or corporation in this state, other than the state bank of Indiana, either in the form of certificates or receipts for the deposit of money, or of promises to pay the bearer, or any specific person, any sum whatever, for the purpose of being used as a circulating medium, or as a substitute for bank notes, shall be deemed as fraudulent and absolutely void.

Contracts based upon such issues, fraudulent and void.

SECT. 2. All contracts, notes, bonds, or obligations, or agreements of any kind whatever, hereafter to be made, based or founded upon the issue of any such bills, certificates, or receipts above specified, or of which the consideration shall be either in whole or in part the issue, use, or possession of any such bills, certificates, or receipts, shall be deemed fraudulent and absolutely void.

Penalty for making such issues.

SECT. 3. Any person who shall hereafter, either upon his own account, or as agent for another, or as the agent or officer of any company or corporation, other than the state bank of Indiana, issue or put in circulation any bills, certificates, or receipts, designed to be used as a circulating medium, or as a substitute for bank notes as above specified, shall be liable to

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indictment for the same, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars for each offence.

Payments made in such issues, void after first of June.

SECT. 4. That from and after the first day of June next, all payments made within the state, whereof the whole or a part shall be made in notes, checks, drafts, certificates of deposit, or any other paper of individuals, or of corporations, (other than the notes of the state bank of Indiana, or of the chartered banks of other states) of denominations less than five dollars, and made in the form of bank notes for circulation, shall be utterly null and void.

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ACTS

PASSED AT THE SAME SESSION AT WHICH THE REVISED STATUTES WERE PASSED, CONTRAVENING CERTAIN PROVISIONS OF SAID STATUTES.

CHAPTER 72.

AN ACT TO AMEND AN ACT ENTITLED, "AN ACT SUPPLEMENTAL TO AN ACT SUBJECTING REAL AND PERSONAL PROPERTY TO EXECUTION," APPROVED JANUARY 8, 1842.

[APPROVED FEBRUARY 11, 1843.]

Property to be sold for fair value.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That no property of any description whatever, either real or personal, shall be sold on execution, or by virtue of any other process issued by any officer of this state, for a less sum than its fair value at the time of such sale, after deducting all incumbrances thereon, except as herein after provided.

Value, how ascertained.

SECT. 2. For the purpose of ascertaining the value of any property, either real or personal, levied on by any officer, by virtue of any execution or order of sale, founded on any judgment, order, or decree, the execution plaintiff or plaintiffs, his, her, or their agent or attorney, may select one appraiser, and the defendant or defendants another, each of whom shall be disinterested residents and house holders of the township in which such levy may be made, who shall proceed to make a just and true valuation thereof, in the manner prescribed by the act to which this is an amendment; and in case the two appraisers thus chosen shall not agree upon the value of the property thus levied upon, they shall choose a third person of like qualification, in which case the appraisement of any two of them shall be deemed and taken to be the value of such property; and which appraisement, when made and executed, shall be delivered to the officer making such levy, to be by him returned and filed with the execution or other process under which such levy was made: provided, however, that in all cases where either of the parties shall neglect or refuse to select an appraiser as aforesaid, or in case any person, when selected, shall fail or refuse to serve as such, it shall be the duty of the officer holding such execution or order of sale, to appoint some person or persons having the qualifications aforesaid, in the place and stead of such person or

Proviso.

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persons refusing or failing to serve: provided, further, that whenever any execution defendant or defendants shall elect to have his or their property, either real or personal, appraised under the provisions of this act, he shall not be permitted to waive such appraisement.

Revaluation.

SECT. 3. Whenever any officer shall expose property to sale on any execution or order of sale, founded on any judgment, order, or decree, according to the provisions of this act, and the same, or any part thereof, cannot be sold for its appraised value, as aforesaid, it shall be the duty of the officer holding such execution, or order of sale, to make an endorsement thereon to that effect; and thereupon either party may have a revaluation of such property so remaining unsold, in the manner prescribed by the second section of this act, which said revaluation shall be at the cost of the party demanding the same; but no property shall be appraised more than three times during the lifetime of any one execution or order of sale.

Re-offer to sell.

SECT. 4. Whenever any property, levied upon by virtue of any execution or order of sale, shall remain unsold for want of bidders, the plaintiff or plaintiffs, his, her, or their agent or attorney, may cause the same to be re-offered, not exceeding three times during the lifetime of any one execution or order of sale, the sheriff or other officer giving due notice of the time and place thereof: provided, however, that if such property shall not be sold when re-offered as aforesaid, then and in that case the plaintiff or plaintiffs shall pay the costs occasioned thereby.

Return to constitute lien.

SECT. 5. Whenever any property levied upon by virtue of an execution or order of sale, shall remain unsold on the return day of any such writ, it shall be the duty of the officer to return the same with an endorsement of his doings thereon, which return shall constitute a lien upon such property so remaining unsold; and thereupon it shall be the duty of the clerk or justice of the peace into whose office such writ may be returned, to issue a writ of *venditioni exponas* or, *alias* order of sale, directed to the proper officer, commanding him to proceed to sell such property so remaining unsold as aforesaid; in which case either party may have the same re-valued, and the plantiff may have the same re-offered, in the manner and under the same limitations and restrictions as are provided for on the first execution or order of sale.

Venditioni exponas.

Delivery bond.

SECT. 6. Whenever any property shall be levied upon by virtue of any execution or order of sale, or whenever the same shall remain unsold in the hands of the officer, for want of bidders, the execution defendant or defendants shall have the right to the possession thereof, by executing and delivering to the officer holding such writ, a bond, with good and sufficient sureties, to the acceptance of such officer, in double the value of such property, conditioned for the delivery of such property to the proper officer, at such time and place as may be appointed for the sale thereof; and conditioned further, that said defendant or defendants may sell said property at private sale; and

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when so sold, said defendant or defendants shall pay the appraised value thereof to the plantiff or plantiffs, to be applied to the satisfaction of the judgment, order, or decree, on which such execution or other process may have issued.

Provisions when live animals are levied on.

SECT. 7. When one or more live animals are levied on, if the defendant fails to give a delivery bond for the same, the sale thereof shall take place within fifteen days after the levy thereof, on giving ten days notice, as required in case of the sale of personal property under execution, unless the plantiff or defendant shall either of them voluntarily defray the expenses of keeping the same: provided that if in such case such animal or animals, are not sold under such execution or process, the defendant may take possession of the same, but the same shall be subject to the lien of such execution or process.

Return of execution.

SECT. 8. All executions issuing from the circuit or probate courts, or justices of the peace, shall be made returnable at the expiration of one year from the date thereof, and not sooner:

Proviso.

provided, however that the several officers holding executions, shall make one offer to sell, with as little delay as possible after receiving the execution; and in all cases where the sheriff or other officer shall sell property and receive payment therefor, then and in that case such officer shall pay over to the officer issuing such execution or order of sale, the amount so received forthwith; and in case said execution or other process shall be fully paid or satisfied by sale or otherwise, it shall be the duty of such officer to return the same and pay over all money re-

Proviso.

ceived thereon forthwith: provided further, it is hereby made the duty of the sheriff or other officer having such execution, whenever a delivery bond is taken and forfeited, to return it, together with the execution, forthwith to the officer issuing the same.

Defendant may select the tract or part of tract to be levied on.

SECT. 9. In all cases where any officer holding an execution or other process, shall be about to levy the same upon real estate, if the defendant or defendants shall be the owner or owners of more than one tract or parcel, or of one tract or parcel susceptible of division without material injury, such defendant or defendants shall have the right of selecting and designating the particular tract or part to be levied upon by such

Proviso.

officer: provided such tract or part so designated, shall be sufficient to satisfy such execution or other process; but in all cases where such officer shall be about to levy on personal property, if the defendant shall not, on being required and demanded by the officer holding such execution or other process, desig-

Provision as to the selection of personal property.

nate the property to be levied on, then and in that case the plantiff or plantiffs, their agent or attorney, shall have the right to select or designate the particular property to be levied upon; reserving, however, to the defendant or defendants the right of selecting, as exempt from such execution or other process, property not exceeding in value the sum of one hundred and twenty five dollars, and such property designated by such defendant or defendants shall be sold for two-thirds its fair value.

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Rents and profits to be valued.

SECT. 10. In all cases where real estate is about to be levied upon by any officer, the defendant or defendants shall have the right of turning out such and so much as that the rents and profits for seven years will be sufficient to pay the full amount of the debt, interest, and costs, upon which such writ may have issued; and in all cases where real estate may be levied upon by virtue of any execution or order of sale, the rents and profits thereof for seven years, shall be appraised in the manner prescribed in this act for the appraisment of other property; and whenever such rents and profits are appraised at a sum equal to or exceeding the amount due on such writ, such real estate shall not be offered for sale, but the rents and profits shall be offered, and if they will not sell for their appraised value, the officer shall proceed in the same manner as in case of other property.

This act not to extend to certain judgments.

SECT. 11. The provisions of this act shall not extend to judgments or other proceeedings against state, county, or township officers, or to executors, administrators, or guardians, for misfeasance, malfeasance, or nonfeasance in office, nor to proceedings against attorneys for failing to pay over moneys by them collected as such, nor to any judgment, order, or decree, against any bank, savings institution, or insurance company nor to judgments rendered against the principals in any delivery bond.

Court to suspend proceedings in case of administrators &c., when.

SECT. 12. The judges of the circuit and probate courts are hereby authorized, in all cases where executors, administrators, guardians, or other trustees cannot sell the property of their respective trusts, or realize the claims in their favor by reason, in either case, of the want of bidders for property to be sold by order of court or under execution, to make an order and cause the same to be entered upon the order book of the proper court, suspending all proceedings and enjoining all actions against such executors, administrators guardians, or trustees, until such property can be sold or such claims can be realized.

Executions shall not go to another county except upon affidavit &c.

SECT. 13. No execution shall issue on any judgment, order, or decree, entered by any circuit or probate court of this state, directed to any other sheriff than the sheriff of the county in which said defendant actually resides, unless the plantiff or his attorney will make an affidavit before the clerk of the court at which said judgment was rendered, that said defendant has not sufficient property, deducting encumbrances in the county in which he resides, to satisfy said judgment, order, or decree, then and in that case, the clerk of the proper circuit court may issue an execution to any other county in this state, and in that case, the clerk shall endorse on the back of said execution, such affidavit; otherwise it shall be void.

When to take effect.

SECT. 14. This act shall be published in the Indiana Journal and State Sentinel, and shall be in force in each county in the state, upon the filing a copy thereof in the clerk's office of the respective counties, and it is made the duty of the secretary of state to forward a printed copy to each clerk, immediately after

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its publication, and of the clerks of the several circuit courts to note the time of filing thereof in the order book of said court; and all laws coming within the purview of this act, be, and the same are hereby repealed; and nothing in the revision of the laws at the present session shall be taken and construed to contravene or repeal any of the provisions of this act.

CHAPTER 73.

AN ACT TO PROVIDE FOR THE ELECTION OF PROSECUTING ATTORNEYS BY THE PEOPLE.

[APPROVED FEBRUARY 11, 1843.]

Prosecuting attorneys to be elected by the people.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That the qualified voters of the several counties in each judicial circuit of this state, shall elect a prosecuting attorney in each circuit on the first Monday in August preceding the termination of the term of service of the present incumbent, and every two years thereafter, who shall be commissioned by the governor, and hold their offices for the period of two years, and until their successors are elected and qualified.

Clerks to certify votes to secretary of state

SECT. 2. The clerks of the circuit courts shall certify to the secretary of state, immediately after the votes may be compared in the counties, the number of votes given to each person; and it shall be the duty of the governor, within thirty days, to make out commissions to those persons who, from the returns, shall have received the highest number of votes respectively.

Vacancy.

SECT. 3. Upon a vacancy happening in said office, from any cause, the governor shall appoint some suitable person to fill the same, until the next annual election when one shall be elected by the people.

Duties and compensation.

SECT 4. The said prosecutors, so elected by the people, shall be governed by the same laws, discharge the same duties, and receive the same compensation as is now provided by law for prosecuting attorneys: provided, that nothing herein contained shall be so construed as to prevent the present prosecuting attorneys from holding their said office during the term for which they have been elected.

Attorneys at law only eligible.

SECT. 5. No person shall be elected to the office of prosecuting attorney who shall not have a license to practise law in the circuit courts of this state.

SECT. 6. This act to be in force from and after its passage.

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CHAPTER 74.

AN ACT TO EXTEND THE JURISDICTION OF JUSTICES OF THE PEACE AND CONSTABLES IN CERTAIN CASES THEREIN NAMED.

[APPROVED FEBRUARY 11, 1843.]

Jurisdiction in certain cases extended.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That when it shall so happen that there is no justice of the peace or constable authorized to act as such in any township in this state, either through the want of an election or the refusal of such officers to serve in that capacity after being duly elected, it shall be lawful for the nearest justice or constable in any other township of the same county, to act in and for the township or townships which may thus be destitute of those officers, and their acts as such officers are hereby declared to be legal; and it shall not be necessary for the process to show those facts, but may be directed to any constable of the said county.

SECT. 2. This act to be in force from and after its passage.

CHAPTER 75.

AN ACT TO AMEND THE ACT IN RELATION TO DESCENTS, DISTRIBUTION, AND DOWER.

[APPROVED FEBRUARY 13, 1843.]

Widow's portion of personal property.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That the widow of any decedent shall be entitled to select at its appraised value, property of her said deceased husband to the amount of one hundred and fifty dollars, or if the said property shall have been sold, shall be entitled to receive out of the proceeds of such sale the sum of one hundred and fifty dollars in money, for which she shall not account; all laws and parts of laws coming within the purview of this act are hereby repealed.

SECT. 2. This act to take effect and be in force from and after its passage.

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CHAPTER 76.

AN ACT ABOLISHING DOCKET FEES AND DISPENSING WITH FINAL RECORDS IN CERTAIN CASES.

[APPROVED JANUARY 28, 1843.]

Docket fees abolished.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That so much of the act entitled "An act regulating fees and salaries of the several officers and the persons therein named," approved February the 7th, 1831, as authorizes fees to be taxed in favor of attorneys, either in the supreme, circuit, or probate courts, be, and the same is hereby repealed, excepting so much as allows to prosecuting attorneys docket fees in criminal cases: provided, however, that no more than one docket fee shall be charged upon or for the trial of any one indictment or presentment.

No final records, except in certain cases.

SECT. 2. That no final record shall be made by the clerks of the respective courts in this state at the costs of the party losing the same, in any cause tried and determined in any court, except in criminal cases, where a final hearing has been had upon the merits and judgments thereon in chancery cases, in actions where the title to real estate is tried and determined, or where heirs, executors, administrators, or guardians are parties; but any party may have such final record made at his own proper costs, in any case.

Plea in abatement of scire facias.

SECT. 3. It shall be lawful for any defendant or defendants to any scire facias to charge real estate, to plead in abatement of the scire facias, that said defendant or defendants had no real estate in said county at the time of issuing and service of said scire facias.

SECT. 4. This act to take effect and be in force from and after its passage.

CHAPTER 77.

AN ACT ABOLISHING A COMPLETE RECORD IN CERTAIN CRIMINAL CASES.

[APPROVED FEBRUARY 11, 1843.]

Complete records abolished in certain cases.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That hereafter it shall not be lawful for the clerks of circuit courts to make out complete records in any criminal case, except in cases of felony, or where the punishment is confinement in the state prison; but in all such cases, the order book,

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or a transcript thereof, shall be sufficient evidence of such proceedings.

SECT. 2. This act to be in force from and after its passage.

CHAPTER 78.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT FOR THE ELECTION OF COUNTY ASSESSOR," APPROVED FEBRUARY 10, 1841.

[APPROVED FEBRUARY 13, 1843.]

Deputy assessor may make valuation.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That the seventh section of said act be, and the same is hereby so amended as to make it lawful for each deputy assessor to make valuation of lands and town lots, in like manner as his principal may.

SECT. 2. This act shall be in force from and after its passage and publication in the Indiana Journal and State Sentinel.

CHAPTER 79.

AN ACT FURTHER TO AMEND AN ACT ENTITLED "AN ACT POINTING OUT THE MODE OF LEVYING TAXES," APPROVED FEBRUARY 12th, 1841.

[APPROVED FEBRUARY 2, 1843.]

Lien on personal property.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That the twenty-third section of the above recited act providing that the lien of the state on personal property for taxes, shall attach on the first of March, annually, be so amended as that every person, body politic or corporate, shall be bound to list and stand chargeable with tax on all personal property subject to taxation by law, owned or possessed on the first day of January annually.

SECT. 2. This act shall take effect and be in force from and after its passage.

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CHAPTER 80.

A JOINT RESOLUTION IN RELATION TO THE VALUATION OF MILLS AND MANUFACTORIES PROPELLED BY WATER POWER.

[APPROVED FEBRUARY 11, 1843.]

Assessors.

Be it resolved by the general assembly of the state of Indiana, That assessors, in determining the value of mills and manufactories propelled by water power leased from the state, shall only make an estimate of the actual value of the buildings and machinery, and not take into consideration the value given to them by the water power, it being the property of the state for which rent is paid.

This resolution to be in force from and after its passage.

CHAPTER 81.

AN ACT TO AMEND AN ACT RELATIVE TO GRANTING LICENSE.

[APPROVED FEBRUARY 10, 1843.]

Certain articles may be sold without license

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That citizens of this state who, in exchange for articles of their manufacturing or products of agriculture, receive groceries, dye stuffs, oils, paints, or cloths, may, and they are hereby authorized to sell the same within their proper county without procuring a license therefor.

SECT. 2. This act shall be in force from and after its passage.

CHAPTER 82.

AN ACT TO ASSIST AND MAKE COMMON SCHOOLS MORE EFFECTIVE.

[APPROVED FEBRUARY 2, 1843.]

Recognizances to be for the benefit of common schools.

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That the money collected on every forfeiture on a recognizance, shall be regarded and held as belonging to, and a part of, the common school fund of the county within which such recognizance is or shall be taken and forfeited.

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SECT. 2. That such money shall be paid over to, and managed by, the same authority as is now or may be entrusted with the receiving and managing the common school fund of the proper county, and such money shall be managed in the same manner as other common school funds are or may be managed by law. How paid and managed.

SECT. 3. This act shall be in force from and after its passage; and shall be published in the Indiana State Sentinel and Indiana Journal.

CHAPTER 83.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT FOR THE APPORTIONMENT OF THE SENATORS AND REPRESENTATIVES IN THE GENERAL ASSEMBLY OF THE STATE OF INDIANA," APPROVED FEBRUARY 16th, 1841.

[APPROVED JANUARY 2, 1843.]

SECTION 1. *Be it enacted by the general assembly of the state of Indiana*, That the ninth section of the above recited act be, and the same is hereby so amended, that in the year eighteen hundred and forty-four, when the counties of Monroe and Brown would be entitled to elect two representatives jointly, by the provisions of said act, that they shall elect one representative each, separately, in lieu of two representatives jointly. Brown and Monroe counties.

SECT. 2. This act to be in force from and after its passage.

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APPENDIX.

DECLARATION

OF

INDEPENDENCE.

In congress, July 4, 1776.

UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

Propriety of the declaration.

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station, to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires, that they should declare the causes, which impel them to the separation.

Unalienable rights of the people, &c.

We hold these truths to be self-evident—that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness: that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established, should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a de-

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sign to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good. Recitation of injuries.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasion on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose, obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of new officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitutions, and unacknowledged by our laws, giving his assent to their acts of pretended legislation:

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For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

Usurpations on the part of the British crown.

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes, and conditions.

Petitions for redress unavailing.

In every stage of these oppressions we have petitioned for redress, in the most humble terms: our repeated petitions have been answered only by repeated injuries. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Appeal to the British people fruitless, &c.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexion and correspon-

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dence. They, too, have been deaf to the voice of justice, and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things, which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honor.

Declaration.

The colonies absolved from their allegience

Mutual pledge of fidelity.

The foregoing declaration was, by order of Congress, engrossed, and signed by the following members:

JOHN HANCOCK.

NEW-HAMPSHIRE.
Josiah Bartlett,
William Whipple,
Matthew Thornton.

MASSACHUSETTS BAY.
Samuel Adams,
John Adams,
Robert Treat Payne,
Elbridge Gerry.

RHODE ISLAND, &c.
Stephen Hopkins,
William Ellery.

CONNECTICUT.
Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

NEW-YORK.
William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

NEW-JERSEY.
Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

PENNSYLVANIA.
Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

DELAWARE.
Caesar Rodney,
George Read,
Thomas M'Kean,

MARYLAND.
Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of [Carrollton.

VIRGINIA.
George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, jr.
Francis Lightfoot Lee
Carter Braxton.

NORTH-CAROLINA.
William Hooper.
Joseph Hewes,
John Penn.

SOUTH-CAROLINA.
Edward Rutledge,
Thomas Heyward, jr.
Thomas Lynch, jr.
Arthur Middleton.

GEORGIA.
Button Gwinnett,
Lyman Hall,
George Walton.

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OF THE DEGREES OF KINDRED.

It is here necessary to explain how degrees of cognation are to be computed; and first we must observe, that there is one species of cognation which relates to ascendants, another to descendants, and a third to collaterals. The first and superior cognation is that relation which a man bears to his parents; the second or inferior is that which he bears to his children; the third is that relation which he bears to his brothers and sisters and their issue; and also to his uncles and aunts, whether paternal or maternal. The superior and inferior cognation commence at the first degree; but the transverse or collateral cognation commences at the second.

§ I. A father or a mother is in the first degree in the right line ascending: and a son or a daughter is also in the first degree in the right line descending. A grandfather or a grandmother is in the second degree in the right line ascending; and a grandson or granddaughter is in the second degree in the right line descending; and a brother or a sister is also in the second degree in the collateral line. A great-grandfather or a great-grandmother is in the third degree in the right line ascending; and a great-grandson or a great-granddaughter is in the third degree in the right line descending; and the son or daughter of a brother or sister is also in the third degree in the collateral line; and by a parity of reasoning, an uncle or an aunt, whether paternal or maternal is also in the third degree. A paternal uncle, called *paternus* is a father's brother; a maternal uncle, called *avunculus*, is a mother's brother; a paternal aunt, called *amita*, is a father's sister; and a maternal aunt, called *matertera*, is a mother's sister.

§ II. A great-great-grandfather or a great-great-grandmother is in the fourth degree in the right line ascending; and a great-great-grandson or a great-great-granddaughter is in the fourth degree in the right line descending. Also, in the transverse or collateral line, the grandson or the granddaughter of a brother or a sister is in the fourth degree; so is a great-uncle or a great-aunt, paternal or maternal, and cousins german, (*consobrini*). But some have been rightly of opinion that the children of sisters are properly *consobrini quasi consororini;* that the children of brothers are properly brothers *patruel*, if males, and sisters *patruel*, if females; and that, when there are children of a brother and children of a sister, they are properly *amitini;* but the sons of your aunt by the father's side call you *consobrinus*, and you call them *amitini.*

§ III. A great-grandfather's grandfather or a great-grandfather's grandmother, is in the fifth degree in the line ascending, and a great-grandson or a great-granddaugter of a grandson or a granddaughter is in the fifth degree in the line descending. In the transverse or collateral line, a great-grandson or great-granddaughter of a brother or sister, is also in the fifth degree;

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and consequently so is a great great-grandfather's brother or sister, or a great-grandmother's brother or sister. The son or daughter also of a cousin german is in the fifth degree; and so is the son or daughter of a great-uncle, or a great-aunt, paternal or maternal; and such son or daughter is called *propior sobrino*, and *propior sobrina*.

§ IV. A great-grandfather's great-grandfather, or a great-grandfather's great-grandmother, is in the sixth degree in the line ascending; and the great-grandson or great-granddaughter of a great-grandson or a great-granddaughter, is likewise in the sixth degree in the line descending. And, in the transverse or collateral line, a great-great-grandson or a great-great-granddaughter of a brother or sister, is also in the sixth degree; a consequently a great-great-grandfather's brother or sister, and a great-great-grandmother's brother or sister is in the sixth degree. And the son or daughter of a great-great-uncle or great-great-aunt, paternal or maternal, is also in the sixth degree; and so also is the son or daughter of the son or daughter of a great-uncle or great-aunt, paternal or maternal. The grandson, also, or the granddaughter of a cousin german is in the sixth degree; and, in the same degrees between themselves, we reckon the *sobrini* and the *sobrinæ*; that is, the sons and daughters of cousins german in general, whether such cousins german are so related by two brothers, or by two sisters, or by a brother and a sister.

§ V. It suffices to have shown thus far, how degrees of cognation are enumerated; and, from the examples given, the more remote degrees may be computed; for every person generated always adds one degree; so that it is much easier to determine in what degree any person is related to another, than to denote such person by a proper term of cognation.

§ VI. The degrees of agnation are reckoned in the same manner.*—*Inst. Lib.* III, *Tit.* VI.

* *Agnates* are relations of the same family on the male side. Cognates are relations on the female side, etc,

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EXPLANATIONS

OF

TECHNICAL TERMS AND PHRASES

USED IN THE LAWS.

Administator de bonis non. Administrator of the goods not administed by a deceased executor or administrator

Ad quod dammum. To what damages; a writ to assess damages for obstructing water courses, etc.

Alias. Otherwise; a second writ when the first is not served.

Bona fide. In good faith.

Capias ad respondendum, (capias.) A writ commanding that the body of the defendant be taken to answer to the action.

Capias ad satisfaciendum, (ca. sa.) A writ commanding that the body of the defendant be taken in execution to satisfy the judgment.

Cepi corpus. A return to a capias writ that the body is taken.

Certiorari. A writ to an inferior court, commanding that the proceedings in a cause be certified to a superior court.

Cestui que trust. He for whom the trust is; the person for whose benefit a trustee holds an estate.

Choses in action. Things in action, as bonds, notes, etc.

De bene esse. Conditionally.

De novo. Anew. A *venire de novo* is awarded when a new trial is granted after a verdict.

Dedimus potestatem. A commission usually sent by a court to some individual or judicial officer, authorizing him to take and transmit testimony.

De facto. In fact; as contra-distinguished from *de jure*, of right.

Demur. } Is an issue of law to be tried
Demurrer. } by the court.

Distress infinite. A writ commanding the property of a person to be distrained until he shall appear in court and file special bail.

Emblements. The profits of lands which have been sowed.

Estate per autre vie. The interest which one has in lands during the life of another.

Exoneretur. A discharge of special bail, entered after the surrender of the principal.

Ex post facto. After the act.

Ex parte. On the part of one only.

Ex officio. By virtue of the office.

Feme covert. A married woman.

Feme sole. An unmarried woman.

Fieri facias. A writ of execution commanding that the judgment be made of the estate of the defendant.

Garnishee. The party in whose hands another's money, etc., is attached.

Guardian ad litem. Guardian during suit.

Habeas corpus. A writ commanding that a person in custody be brought before a court or judge for the purpose of investigating the legality of the imprisonment, etc.

Habere facias possessionem. A writ commanding that the sheriff give possession of lands to him who has recovered in ejectment.

Instanter. Immediately.

Jury de mediatatelingua. A jury composed of one half foeigners.

Levari facias. A writ of execution by which land is ordered to be levied.

Livery of seizin. A delivery of possession of lands.

Mandamus. A writ issuing from a superior court to some officer, corporation, or tribunal, commanding some official act to be done.

Malfeasance. A corrupt performance of some official duty.

Mesne process. Intermediate process; the writ by which the defendant is brought into court.

Minimum price. Smallest price.

Misfeasance. An improper performance of some official duty.

Moiety. One half.

Ne exiat. A writ to restrain an individual from departing the state.

Nihil. A return upon a scire facias where it is not executed.

Nihil dicit. } The name of a judgment
Nil dicit. } where no defence is plead'd.

Nihil debit. } The plea of general issue to
Nil debit. } an action of debt.

Non compos mentis. Not of sane mind.

Non sum informatus. An answer by an attorney when he has nothing more to say for his client.

Non est inventus. A return to a writ of capias where the defendant is not found.

Non est factum. A plea denying the execution of a deed or specialty sued on.

Non assumpsit. The plea of general issue in an action of assumpsit.

Nonfeasance. Non performance of an official act.

Nuncupative will. A will made before witnesses, declared by word of mouth only.

Nolle prosequi. Is entered by the prosecuting attorney, when he dismisses or will not further prosecute an indictment.

Oyer. To hear. To crave oyer is to demand the reading of the bond or other writing sued on.

Parol evidence. Evidence by word of mouth.

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Prima facie. On the first appearance. Prima facie evidence is that which is sufficient until obviated by evidence from the opposite party.

Posse comitatus. Power of the county.

Plene administravit. A plea by an administrator that he has fully administered.

Pluries. Often times; a third writ issued where a first and second have not been executed.

Pro confesso. For confessed.

Profert. A party makes *profert* when he brings into court the written instrument upon which he relies in his pleadings.

Qui tam. The name of an action in which the plaintiff sues as well for himself as for the state or public, and in which he is entitled to a part of the judgment recovered.

Quo warranto. A writ requiring the person or body corporate to whom it is directed to show cause why he or they claim to perform a particular function.

Quare clausum fregit. The name of an action of trespass to real property, or for breaking and entering the plaintiff's close.

Quietus. Acquittance.

Subpœna. The name of a writ generally applicable to summoning witnesses.

Supersedeas. A writ to stay proceedings until the appellate or supreme court shall reverse or affirm the judgment of the inferior court.

Scire facias. The name of a writ requiring the defendant to show cause why execution should not issue upon a judgment or recognizance.

Scire feci. The return to a writ of scire facias when it is served.

Talesmen. Such men as are not regular jurors, taken from the by-standers to complete the regular panel.

Tenancy by curtesy. Is he who marries a woman possessed of lands in fee simple, and has by her a child which comes alive into the world. By virtue whereof he has a life estate in the lands.

Tenant in dower. Is a woman possessing lands which were the property of her deceased husband, and to which she is entitled during her life.

Terre tenant. Tenant of the lands.

Testatem fi. fa. or ca. sa. Is a writ issued to another county, in which writ it is testified or suggested that the defendant is not found or has no property in the first county.

Tort. Wrong.

Venire facias. A writ commanding the proper officer to summon a jury.

Venue. Vicinage; neighborhood. The county or township in which the action is laid.

Vi et armis. With force and arms. This phrase is applicable to actions of trespass.

Viva voce. With the living voice. By word of mouth.

Venditioni exponas. A writ commanding the officer to offer for sale property previously levied by virtue of a former execution.

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Practice.
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